

Scottish Parliament Region: Central Scotland

Case 200600453: Falkirk Council

Summary of Investigation

Category

Local government: Planning; Objection to planning application by neighbour

Overview

The complainant (Mr C) raised a number of concerns concerning an application for planning consent made by his neighbour to Falkirk Council (the Council) for formation of a driveway and the erection of a boundary fence on land which had previously been an area of open space traversed on its perimeter by a footpath.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) in considering his neighbour's application did not have proper regard to Mr C's objections (*not upheld*);
- (b) did not have proper regard to central government advice in the form of Planning Advice Note 46 on planning and crime prevention (*not upheld*);
and
- (c) did not properly consider Mr C's requests that they close the footpath, or assist with heightening his boundary wall, or erect a high fence abutting his wall (*not upheld*).

Redress and recommendations

Although not upholding the complaint the Ombudsman recommends that the Council consider whether it can use powers contained in the Antisocial Behaviour etc Act 2004 to address the problems of vandalism, graffiti and antisocial behaviour which Mr C is experiencing.

The Council accepted with qualification the recommendation.

Main Investigation Report

Introduction

1. The complainant (Mr C) and his wife (Mrs C) reside in a house which was formerly separated from the property of his neighbours (Mr and Mrs A) by an area of open space. A footpath from the main road traverses the length of this area adjoining Mr C's boundary. Mr and Mrs A agreed to purchase the area up to the footpath which was in private ownership and applied to Falkirk Council (the Council) for planning consent. Mr C objected, unsuccessfully, to the planning application on grounds that it would channel existing anti-social behaviour nearer to his home.

2. The complaints from Mr C which I have investigated are that the Council:

- (a) in considering his neighbour's application did not have proper regard to Mr C's objections;
- (b) did not have proper regard to central government advice in the form of Planning Advice Note 46 (PAN 46) on planning and crime prevention; and
- (c) did not properly consider Mr C's requests that they close the footpath, or assist with heightening his boundary wall, or erect a high fence abutting his wall.

Background

3. The investigation is based on information supplied by Mr C and the Council's response to my enquiry. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

4. Mr and Mrs C have lived in their home at 24 X Road since 1962. When they moved in, the area behind their home was open farmland. The adjacent ground had four lock up garages on it. These lock up garages were removed around 1973 when a developer constructed houses on the field. A footpath was created at that time adjacent to Mr C's side garden wall. The site of the lock ups functioned as privately owned open space between 24 X Road and property of their neighbours at 28 X Road. The footpath is currently lit by street lighting standards. Mr C stated that over the years he had experienced problems from vandals and that all the windows in his house facing the footpath had been broken at some time. In 2004, after Mr C requested that the footpath

be closed, he was visited by a Council officer who informed him that the Council would neither move the footpath nor close it.

5. In April 2005, Mr C's neighbours at 28 X Road (Mr and Mrs A) applied for planning permission for change of use of private open space to garden ground, formation of a vehicular access, and the erection of a 1.8 metre fence.

(a) The Council in considering his neighbour's application did not have proper regard to Mr C's objections

6. Mr C made representations on the application in a letter dated 15 April 2005. With this he summarised the problems he had experienced since the footpath had been created in 1973. One feature of the footpath was that it was 90cm higher than the garden ground on Mr C's side of the wall. The wall itself is situated only 1.5 metres from a side window at ground floor level in Mr and Mrs C's home.

7. In his letter of representation of 15 April 2005, Mr C stated that a likely consequence of Mr and Mrs A erecting a fence on the other side of the footpath would be to divert and concentrate existing anti-social behaviour toward his home. Mr C repeated his suggestion that the Council do away with the footpath and thereby allow Mr and Mrs A to build their fence to adjoin Mr and Mrs C's property.

8. Mr C's letter of representation was acknowledged on 16 June 2005. He was informed that Mr and Mrs A's application fell to be determined by the Director of Development Services under delegated powers.

9. Development Services consulted with the Council's Roads Development Unit who replied that they had no objections to Mr and Mrs A's proposals subject to conditions being imposed relating to access, visibility and construction.

10. The application was passed to a planning case officer (Officer 1) to prepare a report. Officer 1's report dated 16 August 2005, described the proposal as change of use of public open space to private garden ground. He adjudged the proposals to accord with the Falkirk Local Plan. He considered that the observations of the Roads Development Unit could be accommodated by means of a condition to be attached to the grant of planning permission.

11. Officer 1 also commented on Mr C's objection which was the sole representation received. He considered, however, that there was no evidence to support Mr C's assumption that existing anti-social behaviour on the application site would be pushed closer to his property should consent be granted. He considered it unlikely that this would occur. The only remaining public ground would be a footpath on the boundary of the application site and Mr C's property. In Officer 1's view this would result in a significantly reduced area for anti-social activity to occur. Officer 1 recognised that anti-social behaviour was a material consideration. He considered the proposal would not increase the likelihood of anti-social behaviour occurring. He decided to grant conditional planning consent. Mr C was informed of the decision by letter of 18 August 2005.

(a) Conclusion

12. I consider that Officer 1's report addressed Mr C's objection to Mr and Mrs A's proposals. It reached a view, however, which repudiated Mr C's concern that anti-social behaviour would increase. Mr C and Officer 1 reached opposite views on whether the fence would increase or decrease the incidence of anti-social behaviour. However, Officer 1 explained the reasons for his views. I do not see evidence of maladministration in the way he reached his decision to grant planning consent. I do not uphold this complaint.

(b) The Council did not have proper regard to central government advice in the form of PAN 46 on planning and crime prevention

13. Subsequent to the granting of planning consent, Mr C sought advice from a Central Police Crime Prevention officer on 8 December 2005. He submitted a formal complaint to the Director of Development Services (the Director) on 23 January 2006. He referred to a 2004 local police initiative and to PAN 46 (Annex 2). He stated PAN 46 encouraged planning authorities to provide environments which helped discourage anti-social and criminal behaviour and to make efforts to prevent crime and increase community safety. PAN 46 advised that layouts should not provide blind corners, opportunities for concealment and should maintain privacy within the curtilage of buildings. Mr C maintained that consideration of the application had not had proper regard to planning for crime prevention. After the fence had been erected, local youths had been provided with a sheltered haven and had adorned it with graffiti. Mr C maintained that his human right to respect of privacy and family life had been ignored.

14. Mr C's letter was passed by the Director to the Development Control Manager (Officer 2) for a response. Officer 2 replied in a letter of 7 February 2006. He stated that prior to the approved change of use, the site was open space of limited visual and recreational value. The adjacent footpath was not part of the proposed development. Officer 2 considered the 1.8 metre high fence was consistent with boundary treatments in the surrounding area. He did not consider that approval of the development significantly altered the physical appearance of the surrounding area and stated that Mr C's concerns about anti-social behaviour were best addressed by the police. Officer 2 said he would be happy for his staff to meet with the local police to help address the anti-social behaviour.

15. Mr C responded to the letter on 12 March 2006 maintaining that the original decision to grant conditional consent was devoid of consideration on crime prevention. He pointed out that his house was the only house along the path which had windows at pavement level and that he had suffered from vandalism the previous week when 24 bricks had been removed from his boundary wall.

16. The Director replied to this letter on 27 March 2006. She stated that while crime prevention can be a material planning consideration, it had to be balanced against all other material considerations and the development plan (the Falkirk Local Plan). Officer 1's report, of which Mr C had a copy, stated that the development was in accordance with the development plan and that there were no material considerations which could justify refusal of planning consent. Mr C was informed that he could complain further to the Chief Executive.

(b) Conclusion

17. Neither Mr C, in his letter of representation on Mr and Mr A's proposals, nor Officer 1 in compiling his report made specific mention of PAN 46. Officer 1 accepted in his report that anti-social behaviour was a material planning consideration. While it would have been best practice to back up his views by specific reference to PAN 46 he was not obliged to refer to the guidance in the planning advice note as a policy consideration. Quoting the advice in my view might have helped to clarify the context but it could not be part of the weighting of factors for and against approving the application in the same way as the development plan, Scottish planning policies or the national planning

framework. I do not consider that omitting a specific reference to PAN 46 amounts to maladministration or service failure. I do not uphold this complaint.

(c) The Council did not properly consider Mr C's requests that they close the footpath, or assist with heightening his boundary wall, or erect a high fence abutting his wall

18. In his letter of 23 January 2006 to the Director (paragraph 13), Mr C proposed that the Council rectify the situation swiftly and amicably by closing the footpath, or building the wall around his property higher, or building a fence along the side boundary of his property (as had been suggested by the police).

19. Officer 2 in his response of 7 February 2006 stated that the Roads Development Unit considered that the path next to Mr C's wall was well used and should remain open. Development Services would not promote the closure of an established well used footpath. The Council, as roads authority, had no duty to erect or maintain fences adjacent to public roads or footpaths and were unable to agree to Mr C's request that they build a wall or fence around his property.

20. Mr C then wrote to the Chief Executive on 2 April 2006. She responded on 10 May 2006 noting that the Director previously informed Mr C why it was not considered appropriate to close or move the footpath. While appreciating Mr C's concerns about anti-social behaviour within the vicinity of his property, in assessing the application, it was not considered that implementation of the proposal would increase the likelihood of anti-social behaviour occurring. The enclosure of an untidy area of open ground into Mr and Mrs A's garden ground would, in the Chief Executive's opinion, reduce the area within which anti-social behaviour could occur.

(c) Conclusion

21. I accept that Mr C was not happy when, some eleven years after moving to 24 X Road, the footpath was created. The footpath has now been in existence for over three decades. The Roads Development Unit considers that the path is well used and should remain open. Development Services, for their part, say they will not promote the closure of an established well used footpath. The Council have also stated that as roads authority they have no duty to erect or maintain fences adjacent to public roads or footpaths. I consider that the Council have properly considered, but rejected, all three of Mr C's suggestions. I do not uphold this complaint.

(c) *Recommendation*

22. Although not upholding the complaint the Ombudsman recommends that the Council consider whether it can use powers contained in the Antisocial Behaviour etc Act 2004 to address the problems of vandalism, graffiti and antisocial behaviour which Mr C is experiencing.

23. The Council accepted with qualifications the recommendation.

24 October 2007

Explanation of abbreviations used

Mr C	The complainant
Mrs C	The complainant's wife
Mr and Mrs A	The complainant's neighbours who applied for planning consent
The Council	Falkirk Council
PAN 46	Scottish Office Development Department Planning Advice Note 46 Planning and Crime Prevention (1994) (See Annex 2)
24 X Road	Mr and Mrs C's home
28 X Road	Mr and Mrs A's home
Officer 1	The Council's planning case officer
The Director	The Council's Director of Development Services
Officer 2	The Council's Development Control Manager

List of legislation and policies considered

Section 37 of the Town and Country Planning (Scotland) Act 1997 required that in dealing with an application made to a planning authority for planning permission, a planning authority should have regard to the provisions of the development plan, as so far as material to the application, and to any other material considerations.

The Antisocial Behaviour etc. (Scotland) Act 2004 extends the powers of local authorities in Scotland to deal with antisocial behaviour. Relevant to this complaint are the ability to serve antisocial behaviour orders (section 4), powers of the police to issue fixed penalty notices for litter contraventions (sections 55 to 57), additional powers to local authorities to issue notices about graffiti (sections 58 to 65) and restrictions on the sale of spray paint to children (sections 122 to 125)

The Scottish Office Environment Department Planning Advice Note 46 (PAN 46) *Planning for Crime Prevention* (October 2004) (since superseded by Scottish Executive Development Department Planning Advice Note 77 (PAN 77) *Designing Safer Places* (March 2006))