

Case 200601887: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Planning: Handling of planning application, complaints by objectors

Overview

The complainant (Ms C) raised concerns about the way The City of Edinburgh Council (the Council) handled an application for a skatepark in Inverleith Park.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council were unreasonable in the way they treated Ms C as an objector to a previous application for the same project (*not upheld*); and
- (b) there were failings in the way the Council handled Ms C's complaints about this matter (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) apologise to Ms C for failing to give a full response to her complaint; and
- (ii) confirm that recent improvements to their complaints handling system address the issues highlighted in this report.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. Since November 2001, The City of Edinburgh Council (the Council) had supported a project to develop a skatepark for the city. This culminated in planning applications being made to develop a facility in Inverleith Park in the north of the city. Ms C had submitted objections to the original application in July 2004 and complained that, when this application was withdrawn to be replaced by a new one in June 2006, her objections were not considered to be pertinent. She complained that the Council was, therefore, acting unfairly in its role as both applicant and planning authority. She further complained that the Council did not respond appropriately to her concerns. Once the Council's complaints procedure was exhausted, Ms C referred her complaint to the Ombudsman's office on 31 October 2006.

2. The complaints from Ms C which I have investigated are that:
- (a) the Council were unreasonable in the way they treated Ms C as an objector to a previous application for the same project; and
 - (b) there were failings in the way the Council handled Ms C's complaints about this matter.

Investigation

3. To investigate these complaints, I made inquiry of the Council on 13 March 2007 and received their response on 22 March 2007. I reviewed the correspondence between Ms C and the Council, along with the reports relevant to the planning applications and the Council's service charter for their planning service. The Council also provided me with lists of objectors to the applications and a copy of a standard letter sent to them.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Ms C and the Council were given an opportunity to comment on a draft of this report.

Background

5. A project to develop a skatepark in Edinburgh for the use of skateboarders, inline skaters and BMX bikers was initiated when a working group was formed in 2002. Two preferred sites, including Inverleith Park, were identified and, after one was eliminated for legal reasons, 20 others were considered. The Inverleith Park site was identified as the most appropriate.

Following consultations, applications for two alternative sites within Inverleith Park's boundaries were validated on 30 July 2004 and 13 October 2004. Both of these applications were presented to the Development Quality Sub-Committee on 16 February 2005 with one recommended for approval and the other for refusal. It was agreed that both applications be continued to allow for further examination of issues and both were subject to a hearing on 16 March 2005.

6. On 26 June 2006, a new application was registered for one of the two sites that had been identified within Inverleith Park and the previous applications were withdrawn on 7 July 2006. Members of the public were free to comment on the new application until 8 August 2006. As with previous applications relating to this project, a significant number of comments were received in opposition to and in support of the application. The application was considered at a meeting of the Development Quality Sub-Committee on 22 November 2006 and the members voted to refuse it.

(a) The Council were unreasonable in the way they treated Ms C as an objector to a previous application for the same project

7. On 4 July 2006, Ms C complained to the Council via their customer care email address that members of the public who had made comments on the original planning applications for the skatepark had to 'expend time and energy making their views known a second time'. She felt that this was unfair, as residents may not know that their original comments would not be considered in relation to the new application. Furthermore, she felt that the new application did not represent a material change to its predecessor and that the application should have been made by way of an amendment rather than a new application. She further commented in a letter to the Council on 24 October 2006 that this was not good practice and was unfair to residents in a controversial case such as this. She suggested a number of ways that residents and original respondents may have been alerted to the new application, including a letter to previous respondents or prominently placed public signs.

8. A letter from the Chief Executive on 31 October 2006 briefly presented the Council's view that the process had not been unfair. The Council further elaborated this position in their letter to me of 19 March 2007. They said that a new application gave members of the public a chance to comment on the issues behind the application in the usual ways and that this would not be the

case for an application that had been subject to repeated amendments. They pointed out that the application had elicited a considerable number of responses (2,686 letters) and that this demonstrated a high level of awareness of the application.

9. In addition to the usual required notifications, the Council provided me with evidence that they wrote a letter to those who had commented on the previous applications alerting them to the new application. This letter explicitly states that previous comments would not be 'forwarded' to the new application and gives clear instructions about how to make further submissions. I have also seen the address lists used by the Council in sending out this letter. Although Ms C's address appeared on this list, she stated that she did not receive such a letter from the Council.

(a) Conclusion

10. At the heart of Ms C's complaint is her belief that the Council did not make the planning system sufficiently accessible to local residents who had an interest in the skatepark project. The project was significant and controversial and had elicited a large number of representations from those who supported and opposed it.

11. From the evidence I have seen, it is clear that the Council exceeded the required level of notification by writing to those who had previously submitted representations to explain the significance of the new application. I cannot explain why Ms C did not receive this letter, but I am satisfied that the Council took steps to assist previous respondents in commenting on the proposals. Furthermore, there had been a number of public meetings relating to this project since its inception and it had gained a significant profile in the community.

12. Ms C also complained that the decision to submit a new application for the project was unfair because this meant that those who had an interest in it had to submit their comments again. She felt that the new application was not materially different from the previous one for the same site. However, it is clear from the Council's minute of the discussion about that previous application that further information was needed before a decision would be made. This included a noise impact assessment, work to set the proposal in the context of other leisure developments in Inverleith Park and further consultation with community groups. This additional information was significant and I consider that it was appropriate for the Council to make it available to decision-makers by

way of a new application. Indeed, it could be argued that it would have been improper for the Council not to seek fresh comment on the proposals in the light of the new information.

13. In conclusion, I consider that the Council acted responsibly in the way they processed planning applications for this project and went beyond the usual requirements to alert previous respondents to the new application. I do not, therefore, uphold this complaint.

(b) There were failings in the way the Council handled Ms C's complaints about this matter

14. Ms C complained to the Council by email on 4 July 2006 and received an acknowledgement the next day, which informed her that her complaint had been forwarded to the planning department (City Development) for them to respond within ten working days. She received no reply within that time and sent a follow-up email on 13 August 2006 and a letter to the Chief Executive on 4 September 2006. An officer in the Chief Executive's office responded to this letter on 14 September 2006 and apologised for the delay. The officer also explained that the complaint had been wrongly directed to City Development and would now be considered by the Department of Culture and Leisure. Ms C had not received this letter by 21 September 2006 when she wrote a further letter to the Chief Executive complaining about the delay.

15. The Council sent a letter to Ms C on 9 October 2006 responding to her complaint, which focussed on the entitlement of applicants to withdraw a planning application and submit a new one. Ms C considered that this did not answer her fundamental complaint about the unfairness to previous respondents she felt had been introduced by the submission of a new application for the project. She wrote to the Council on 24 October 2006 to express these concerns and received a reply from the Chief Executive on 31 October 2006 which upheld the position expressed in the letter of 9 October 2006, simply stating that he did not see any unfairness in the process. This letter also commented on the delay in sending previous correspondence and noted that improvements to the Council's mail handling were being made. In response, Ms C commented that these improvements would not address the failure to respond to her initial complaint made by email on 4 July 2006.

(b) Conclusion

16. There was a delay of some three months between Ms C's original complaint and her receipt of a response from the Chief Executive's office. The Council advised Ms C that the complaint had been misdirected, but this does not excuse the delay, as it was the Council's responsibility to ensure that the complaint was finally addressed by the correct department. The Council did not respond until Ms C had inquired about the progress of her complaint on two occasions.

17. Ms C also complained that, when she did receive a response, it did not answer the fundamental concerns she raised in her original complaint. In their submissions to the Ombudsman's office, the Council told me that they considered the response to address the issues adequately. However, I understand Ms C's concerns that the questions she asked about the need for respondents to submit fresh comments on the new application were not answered. The Council's response focussed on their dual role as applicant and planning authority and did not address her clearly stated concerns in this area. As is clear from my conclusions in paragraphs 11-13, I am satisfied with the explanations the Council gave me of the way the applications were handled. However, these explanations were not given to Ms C. Indeed, in commenting on the draft of this report, Ms C said that if she had received the explanations elicited by this investigation in the first instance, there would have been no need to take the matter further. On the grounds that the Council delayed in responding to Ms C and that they did not address a fundamental issue she raised, I uphold this complaint.

(b) Recommendations

18. I note that the Council apologised to Ms C for the original delay in responding to her complaint. I recommend that they further apologise for failing to give her a full response to her complaint. I also recommend that they confirm that recent improvements to their complaints handling system address the issues highlighted in this report. In particular, this report identifies the need for measures to ensure the appropriate handling of complaints which may concern more than one department and checks on the quality and adequacy of responses to complaints.

19. The Council have accepted the recommendations and will act on them accordingly

24 October 2007

Explanation of abbreviations used

The Council

The City of Edinburgh Council

Ms C

The complainant