

Scottish Parliament Region: Central Scotland

Case 200603413: Falkirk Council

Summary of Investigation

Category

Local government: handling of application (complaints by applicants)

Overview

Messrs C (the Complainants), the directors of a building company, complained about the way in which Falkirk Council (the Council) handled their request for timber decking to be laid as a Non Material Variation (NMV) to planning permission.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to deal with the Complainants' verbal request that decking be considered as a NMV to planning permission (*upheld*);
- (b) a formal application for decking to be considered as a NMV failed to receive a timely response (*upheld*); and
- (c) the Council failed to hold proper file notes (*partially upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) emphasise to staff the importance of acknowledging documentation sent to them. Also, that if in the process of consideration decisions are taken about how matters are being handled, these are also shared with the complainant;
- (ii) make the Complainants a fulsome apology for their oversights with regard to the complaint and their failure to deal with the application in a timely manner; and
- (iii) emphasise to staff the importance of properly recording meetings, including the date of the meeting, any decision(s) reached, the names of those involved, the name of the person recording the note and the date the note was written. Thereafter, ensure that the note is correctly placed in the file.

Unfortunately, the Council have declined to accept the recommendations.

Main Investigation Report

Introduction

1. On 31 January 2007, the Ombudsman received a complaint from Messrs C (the Complainants), directors of a building company, about the way in which Falkirk Council (the Council) handled their request for timber decking, laid at a property at X Gardens, to be considered as a Non Material Variation (NMV) to planning permission. The complainants said that, during a meeting with a Planning Officer in August 2005, they made a verbal request for the decking to be considered as a NMV. They said they followed this up in September 2005 by sending the officer concerned amended drawings and photographs but they complained that no action was taken on their request. They said they then engaged a consultant to act on their behalf (the Consultant) who met with the Planning Officer on 5 May 2006 and, on 8 May 2006, he made a formal request for the decking to be considered as a NMV. The complainants alleged that their application did not receive a response until 8 August 2006, when the consultant was formally advised that the decking was considered material and that it would require planning permission. The Complainants were invited to make an appropriate application. The complainants said that their application had, in June 2006, initially been viewed to be a NMV but that the decision was subsequently overruled by the development control manager. The complainants believed that the Council's actions in this matter were to their serious disadvantage.

2. The complaints from the Complainants which I have investigated are that:
- (a) the Council failed to deal with the Complainants' verbal request that decking be considered as a NMV to planning permission;
 - (b) a formal application for decking to be considered as a NMV failed to receive a timely response; and
 - (c) the Council failed to hold proper file notes.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between the Complainants, their Consultant and the Council. I have also had sight of NMV Record Sheets (2) which detail action taken on 7 June 2006 and notes from the Council file of meetings on 5 May and 21 August 2006. On 25 April 2007 I made a written enquiry of the Council and their response was dated 29 May 2007.

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

(a) The Council failed to deal with the Complainants' verbal request that decking be considered as a NMV to planning permission

5. While building a house for a client, the Complainants said that, although it was not part of the application approved, they were asked to install timber decking instead of a step/plat access to French doors. Work began and they said that they met and discussed the matter with a Planning Officer on 31 August 2005 and he advised that the change could be treated as a NMV, if a fence with a minimum height of 1500mm was built on the northern boundary and amended drawings and photographs were sent to him on completion. They said it was agreed that a NMV would be issued on receipt of the above information. The complainants said that they sent the information required in September 2005 (with photographs dated 27 September 2005) and that they had further meetings with the Planning Officer after that (on 21 October and 25 November 2005) but that nothing further happened with regard to their request that the decking be considered as a NMV.

6. In their reply to my enquiries dated 29 May 2007, the Council acknowledged that, although after the meeting with the Planning Officer on 31 August 2005 (see paragraph 5) the Complainants submitted an amended plan and photograph, this was for information purposes only. The Council admitted that the documents sent failed to receive an acknowledgement as they should have done but said that, as the issue of the timber decking was still being discussed between the Complainants and their client (they were in dispute), the Council put the matter on hold until the situation had been resolved.

(a) Conclusion

7. The Complainants thought that by submitting an amended plans and photographs they had complied with the Council's requirements for their amended application to be considered as a NMV. The Council did not agree, saying that the documents sent to them had only been for information purposes and that they had decided to hold matters in abeyance until the dispute between the Complainants and their client had been resolved.

8. It is not possible to me to determine what was said at the meeting on 31 August 2005 as there is no file record but I have no reason to doubt the Complainants' recollection that they had asked for the amendment to the development to be considered as a NMV. The complainants were certain that their reason for submitting an amended plans and photographs was for this purpose, although the note they sent with these documents makes no reference to it. However, the Council informed me that, when this information was received, they were holding matters in abeyance, which implied to me that there had been an intention to deal with the matter but that a decision had been taken not to at that stage. The Complainants did not appear to have been told this, as I have not had sight of any documentation confirming this position. In this connection, I cannot speculate on the outcome of any consideration, but I must be critical of the Council's failure to make a record of the discussion which took place on 31 August 2005 and of their failure to acknowledge receipt of the documents sent to them in September 2005. Similarly, although the Council said that they were holding matters in abeyance, no confirmation has been made available saying that the Complainants had been so advised. In these circumstances, I uphold the complaint.

(a) Recommendation

9. The Ombudsman recommends that, in the light of the administrative failures identified above, the Council emphasise to their staff the importance of recording meetings and acknowledging documentation sent to them. Also that, if in the process of consideration decisions are taken about how matters are being handled, these are also shared with the complainant. A fulsome apology for these oversights should be sent to the Complainants.

(b) A formal application for decking to be considered as a NMV failed to receive a timely response

10. From information available to me I am aware that planning officers visited the site concerned on 19 April 2006 and, the next day, the Complainant's client told them that the decking had been 'condemned'. This was followed, on 21 April 2006, by a telephone call from the Planning Officer to the Complainants arranging a meeting for them all on 24 April 2006. It was also at about this time, the Council said, that they introduced specific procedures relating to recording and acknowledgement of applications for NMVs.

11. However, the Complainants said they were frustrated with the lack of progress being made and they, therefore, instructed the Consultant to act on

their behalf. On 5 May 2006, the Consultant arranged to meet with the Planning Officer. In the meantime, the fence which the Complainants had been told was required (see paragraph 5) had been removed and, at the meeting, it was confirmed that the timber decking would now be treated as a material variation, although the Complainants said it appeared that it was only the absence of paper work that prevented the decking being confirmed as a NMV. On behalf of the Complainants, the Consultant then submitted a written application dated 8 May 2006.

12. In June 2006 the Complainants said that they made a telephoned reminder to the Council about progress and that they were told a letter was about to be typed. The Complainants alleged that on 7 June 2006 their application for NMV was approved and refer to a NMV Record Sheet bearing that date. I have seen this document but it also had handwritten annotations cancelling the NMV approval. It records (with a date of 8 May 2006) that 'Erection of timber decking and fencing agreed as material'. I have not had sight of contemporaneous correspondence to the Complainants about this, although there is correspondence between the Council and their client on 7 June and 26 June 2006 responding to an application for a NMV for a timber walkway their client had made on 30 May 2006; the first of these letters confirmed that an amendment she made could be treated as a NMV; the second rescinded that advice but said that her proposals to reduce the size of the decking would be considered permitted development if the timber fencing was re-erected (see paragraphs 5 and 11). However, no response was sent to the Consultant on the application he made until 8 August 2006. At that time he was advised that the patio doors were considered to be a NMV to permission but that the decking was considered material and a planning application was required. Appropriate forms were enclosed.

13. When responding to this aspect of the complaint on 29 May 2007, the Council acknowledged that the Consultant's application did not receive a response until 8 August 2006 because of 'a combination of annual leave commitments, staff illness, the lack of clarity in national guidance and advice on timber decking and the sensitivity surrounding the situation'. They pointed out that an apology had already been made in respect of the timescales.

(b) Conclusion

14. The complainants' Consultant submitted a formal application for a NMV to planning permission on 8 May 2006 but the Consultant did not receive a

response until 8 August 2006. This appears contrary to the new procedures introduced (see paragraph 10). I note the Council's explanation (see paragraph 13) but this does not explain how it was that the Complainants' client, who also submitted an application for a NMV (see paragraph 12) some three weeks after the Consultant, managed to receive responses from the Council on 7 June and 26 June 2006. The apology and explanation offered to the Complainants, therefore, do not fit with this and I uphold the complaint. Nevertheless, while the Complainants believe that their application was first approved as a NMV and was then overturned sometime between 7 June and 8 August 2006, I have seen no evidence of this. Indeed, it appears unlikely given the importance attached to the erection of the fence (see paragraphs 5 and 11) which had been removed in April 2006.

(b) Recommendation

15. The Ombudsman recommends that the Council make the Complainants a fulsome apology for their failure to deal with their application in a timely manner.

(c) The Council failed to hold proper file notes

16. After receiving the Council's letter of 8 August 2006 (see paragraph 12), the Consultant and a representative of the Complainants met with the Development Control Manager on 21 August 2006. The complainants said he was not aware of their meeting with the Planning Officer on 5 May 2006 (see paragraph 11) as there was no file note available. Similarly, they also said that the Development Control Manager had not made a record of his meeting (on 21 August 2006) until after 23 October 2006, when they checked the file for both file notes.

17. I have seen file notes for the meeting of 5 May 2006 and for 21 August 2006. The copy of the 5 May 2006 meeting notes which was provided by the Complainants had no hand-written annotations. The copy provided by the Council was signed by the Development Control Manager as being a, 'Retrospective file note of meeting'. It is not dated. The second file note (copy provided by the Complainants) was signed and dated 21 August 2006 by the Development Control Manager but the Complainants said that this was not in the file when it was inspected by them on 23 October 2006.

(c) Conclusion

18. There are occasions when file notes may not be written on the day of the action being recorded, however, all notes should record the date of the action/meeting and, if it is different, the date when the note was written. The file note should also record the names of those attending the meeting and the name of the writer. The first of the notes referred to above (see paragraph 17) was acknowledged to be a retrospective note but it was not signed by the person in attendance at the meeting (the Planning Officer), nor was it dated. The second of the notes, as could be expected, was both signed and dated by the Development Control Manager.

19. In the circumstances, I must conclude that it is unclear when, or by whom, the first of these notes was written. This is an administrative shortcoming. Although I note that the Complainants said that neither of these notes was available on inspection on 23 October 2006, I have not seen independent evidence to support this. However, on balance, I partially uphold this complaint.

(a) Recommendation

20. Further to her recommendations above (see paragraph 9), the Ombudsman recommends that the Council emphasise to staff the importance of properly recording meetings, including the date of the meeting, any decision(s) reached, the names of those involved, the name of the person recording the note and the date the note was written. Thereafter, ensure that the note is correctly placed in the file.

24 October 2007

Explanation of abbreviations used

The Complainants	Messrs C
The Council	Falkirk Council
NMV	Non Material Variation
The Consultant	The consultant acting on behalf of the Complainants