

## Scottish Parliament Region: Highlands and Islands

### Case 200502731: The Moray Council

#### Summary of Investigation

##### **Category**

Local Government: Planning; Complaint handling

##### **Overview**

The complainant (Mr C) was dissatisfied with The Moray Council (the Council)'s handling of his complaints relating to a planning consent for his holiday park and their actions in serving an enforcement notice for breach of a condition of that consent. He alleged that there was delay (in excess of three months) in responding to his representations and that they failed to reply fully to the seven points of complaint he had raised.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that the Council:

- (a) delayed in responding to his representations (*upheld*); and
- (b) failed to reply fully to his representations (*upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) review their enforcement procedures and produce guidelines which can be audited; and
- (ii) take steps to meet with Mr C to discuss his outstanding concerns.

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

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) is the owner of a holiday caravan park which he has operated for the past ten years. There are some caravans for let but the majority are privately owned. His agents submitted a planning application to The Moray Council (the Council) in April 2005, seeking permission to extend occupancy of the site to allow 12 month holiday occupation of the whole caravan park. Notification of planning consent was issued by the Council on 27 July 2005. Whilst approval was given, Mr C remained dissatisfied with conditions attached to the decision and exercised his right of appeal to the Inquiry Reporter. His appeal was upheld and the conditions were removed.

2. In the interim, the Council's Planning Enforcement Officer (Officer 1) wrote to Mr C on 17 August 2005, informing him that she had received advice that one of his caravans was not being occupied in accordance with the conditions of planning consent and asked him to contact her within seven days to arrange a site meeting to discuss the matter further. On 18 September 2005, Mr C wrote to the Director of Environmental Services registering a complaint against the Council.

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

- (a) delayed in responding to his representations; and
- (b) failed to reply fully to his representations.

### **Investigation**

4. As part of my investigation of this case, I have discussed the complaint with Mr C and the Council and obtained the relevant documents. I made enquiries to both parties in writing and I have considered the Council's complaints procedure (which was in use at the time of Mr C's original complaint) and the revised version (which came into operation on 1 May 2007). In compiling this report, I have considered the comments of both Mr C and the Council.

5. 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.

**(a) The Council delayed in responding to his representations**

6. Mr C complained that the Council delayed in excess of three months in responding to his complaint.

7. His letter of 18 September 2005 was acknowledged promptly by the service department, with advice that he would receive a full reply by 17 October 2005. On 3 December 2005, Mr C wrote to the Chief Executive informing him that he was still waiting, nearly three months later, for a reply to his complaint. In his reply of 13 December 2005, the Chief Executive expressed his disappointment that he had not had a response from the service involved and offered his apologies. He informed him that he had passed the matter to the Corporate Complaints Officer (Officer 2) and it was anticipated that a reply would be sent by 23 December 2005. Advice was also given that Mr C could refer his complaint to the Ombudsman if he remained unhappy with the investigation or the way it was handled.

8. On 20 December 2005 the Development Control Manager (Officer 3) replied to Mr C's complaint. He offered his apologies for the delay in responding and explained that the employee who originally dealt with the planning application was on long-term sick leave, however, he would address in his letter the seven points made by Mr C in his formal complaint. He informed Mr C that if he remained dissatisfied he could refer the matter to the Chief Executive within 28 days of receipt of the letter, in accordance with the Council's complaints procedure.

9. In his reply to the Chief Executive, Mr C commented that Officer 3's response had failed completely to address a number of his grievances and commented that he was not prepared to wait yet again for three or four months (for a reply) and felt that he had no option but to complain to the Ombudsman. He ended his complaint with the comment that there appeared to be serious management flaws within the Council. In response, Officer 2 invited Mr C to provide him with details of the grievances which he considered had not been addressed and he would undertake to investigate those matters.

10. Mr C stated in his formal complaint to the Ombudsman that he considered that the Council failed to deal with his initial letter of complaint in a timely fashion and they rushed out a reply to comply with the Chief Executive's directive that he should have a response by the Christmas and New Year break.

11. In deciding whether the complaint was a matter which we could consider, or was a premature approach to the Ombudsman, clarification was sought on whether Mr C's complaint had formally exhausted their process. This was confirmed by Officer 2, who indicated also that the Council were revising their complaints procedure. He explained that the main change was a refinement from three stages to two, with the intent that this would speed up and improve the process.

12. I have compared the original and current guide published by the Council and noted that an informal approach, in person or by telephone, to the service concerned is now not part of the formal process for making a complaint, although it is still recommended as an initial step. The targets in the formal stages remain:

Acknowledgement	3 days
Reply from the service department involved	20 working days
Reply from the Chief Executive	20 working days

13. In their response to my enquiry about the delay, the Council explained that the issues which Mr C raised related to the planning decision and appeal and were 'outwith the scope of the complaint procedure'. However, Officer 3 had responded to the letter as a complaint.

14. I asked the Council to comment on the reasons for the delay in replying to Mr C. The Council pointed out that, in his reply to the complainant, Officer 3 acknowledged that the target date was exceeded 'by some considerable time and offered his apologies'. They confirmed that the delay was due, in part, to the long-term absence of the relevant case officer who had an integral role in dealing with the complaint (see paragraph 8). They accepted that an interim response should have been sent to Mr C and apologised for this oversight.

15. The Council commented also that, as a result of Mr C's complaint, action had been taken to strengthen their procedures by improving the provision and quality of interim updates in cases where the standard response times were likely to be exceeded. Since the introduction of the new procedure, they had noted that the handling times had improved and commented that work continues on making further improvements to enhance the effectiveness of their complaints procedure. They provided me with the relevant statistics.

*(a) Conclusion*

16. During their complaints process and in responding to my enquiry on the complaint, the Council acknowledged that they failed to meet the target times in their complaints procedure when responding to Mr C's complaint. An apology was offered to Mr C by the Chief Executive (when Mr C complained that he had not received a reply), by the service department and in response to my written enquiry. The Council recognised their failings and, as a result of this complaint, have reviewed their complaints procedure with a view to improving the service. I noted, from comparison of the old and new complaints procedure, that the timescales have not altered but the Council have informed me that monitoring of the complaints procedure has shown that there has been an improvement in meeting targets and they aim to continue to make further improvements. In the circumstances, while Mr C's complaint against the Council of delay in replying to his complaint is upheld, the Ombudsman is satisfied that the Council have taken steps to address the problem which was highlighted in this head of complaint and she, therefore, has no recommendations to make.

**(b) The Council failed to reply fully to his representations**

17. Mr C's letter of complaint of 18 September 2005 related to a recently determined planning application and a letter he had received from Officer 1, in August 2005, concerning a breach of a condition of that consent (see paragraph 1).

18. In her letter to Mr C, Officer 1 stated that the reason for the imposition of two of the conditions of the planning consent was:

'... to ensure that the caravan is used for holiday purposes.

I have been advised that one of the caravans is not being occupied in accordance with the above conditions. It has been confirmed that the occupants have occupied the caravan for a period of 3 months or more in breach of (a condition).

In addition it has been confirmed that the occupants are not on holiday.'

19. Mr C was invited to contact Officer 1 within seven days to arrange a site meeting to discuss the matter further. The letter did not refer to the date of planning consent (19 July 2005).

20. Mr C stated that he telephoned Officer 1 as she requested and it became clear to him from the conversation that she had failed to carry out even a basic check on the authenticity of the complaint or gathered any background information before issuing her letter. He believed that she had failed to check her facts and that she ignored or bypassed his questions. He was angry because it was clear that other people had been notified that planning consent had been granted, however, he complained that he had received no such advice (NB: this was sent to the agents who were acting on his behalf). Although Officer 1's letter had asked Mr C to contact her to arrange a site meeting, Mr C commented that no arrangements were made for her to carry out a site meeting. Thereafter, Mr C discussed the situation with his agent before making a formal complaint

21. In a file note dated 28 September 2005, Officer 1 noted that she had not been aware when she wrote to Mr C on 17 August 2005 that the conditional planning consent to which the alleged breach referred was issued in July 2005 and that when she spoke to him on the telephone she apologised for the confusion. There is not a contemporaneous note of her conversation with Mr C but Officer 1's recollection is that she apologised to him and explained that she was unaware that the decision notice was of recent date and that Mr C expressed surprise to receive her letter because he was unaware that a decision had been taken. File documents show that Officer 1 subsequently sought the view of the Council's Principal Solicitor (Officer 4) as she had begun to question whether – as the consent was only recently granted - a breach of the conditions of the consent could have occurred. Officer 4 responded to Officer 1 on 10 October 2005 with the advice that, as the particular condition had not yet been implemented, planning consent had not been breached.

22. Mr C complained that the Council had only partially answered some points of his complaint (which concerned not only Officer 1's letter but other issues relating to his planning consent and general planning issues) and failed to answer others. He was dissatisfied with the standard of the Council's response and stated that he wanted his allegations investigated thoroughly and, in view of his experience and dissatisfaction with the contact he had with the planning authority, for them to be fair, open and considerate in all their dealings with every applicant.

23. In my enquiry to the Council I invited them to comment on whether they were satisfied that Mr C's complaint was investigated properly and an adequate

reply given to the seven points of complaint, or to take the opportunity to look again at his representations, with the benefit of Mr C's comments on why he was dissatisfied with their response. The Council decided to look again at the complaint and, in reply to me, provided fuller comments on each of the seven points of complaint. Mr C has stated that the Council have still not provided satisfactory answers. However, I am satisfied that the Council have, in the main, provided a clearer explanation of their practices and planning procedures.

24. Where I had continuing concerns was with the issue of the original letter to Mr C about a breach of a planning condition. I asked, therefore, for further information on their procedures when they receive a complaint about, or become aware of a breach of, a planning condition. In response, the Council explained that each enforcement case is dealt with on an individual case-by-case basis and they would negotiate to find a mutually agreed solution. However, if this approach was unsuccessful then, as a last resort, formal enforcement action would be taken.

*(b) Conclusion*

25. The complaint arose because Mr C was unhappy with the contents of Officer 1's letter of 17 August 2005, which stated that investigation by the Council had confirmed that there had been a breach of planning consent for his caravan site. Although, in response to his complaint, the Council informed him that this was not an Enforcement Notice – and that its purpose was to gather information to assist in the investigation of a complaint – it was written in terms which suggested that it had been issued following investigation and that a breach had occurred. The first intimation Mr C had was a formal letter. His telephone conversation with Officer 1 alerted her to the fact that the planning decision was of very recent date and her subsequent investigation established that there was no breach. This was not referred to in the response to his formal complaint. I can understand, therefore, both why Mr C believed that he was being served with an enforcement notice and why, for him, the Council's response to his formal complaint failed to clarify matters. The Council failed to set the record straight and this was a missed opportunity.

26. I am concerned that Mr C received a formal letter confirming a breach of a planning condition when in fact there had not been a breach. In this regard, I believe the Council's current procedures would benefit from review and guidelines which can be audited.

27. The Council have commented that Officer 3 responded to Mr C's complaint although it dealt with issues relating to the planning consent and appeal. However, Mr C made clear that it was a letter of complaint. If there was any doubt that it was a complaint, this should have been addressed at the outset. However, in accepting it as a properly made complaint, the Council then had to deal with it under their complaints procedure.

28. Investigation of the complaint has shown that the Council failed to address fully the points Mr C raised and his complaint of inadequacy in the response to his complaint is founded. However, the Council have reviewed the case and I am satisfied that they have provided a more detailed response.

29. This was something which should have been capable of resolution through the Council's own complaints procedure but it was not taken to the final stage. Mr C's reluctance to do so because of the delay he had experienced is understandable and, despite the Council's additional comments on the seven points of his complaint, Mr C has issues remaining about his complaint. Continuing the correspondence is unlikely to provide a satisfactory outcome and the Council should send an invitation to him to discuss his outstanding concerns.

30. I uphold this head of complaint.

*(b) Recommendation*

31. The Ombudsman recommends that the Council:

- (i) review their enforcement procedures and produce guidelines which can be audited; and
- (ii) take steps to meet with Mr C to discuss his outstanding concerns.

32. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Board notify her when the recommendations have been implemented.

21 November 2007



**Explanation of abbreviations used**

Mr C	The complainant
The Council	The Moray Council
Officer 1	Planning Enforcement Officer
Officer 2	Corporate Complaints Officer
Officer 3	Development Control Manager
Officer 4	Principal Solicitor