

Scottish Parliament Region: West of Scotland

Case 200601465: East Dunbartonshire Council

Summary of Investigation

Category

Local government: Planning: Handling of application (complaint by opponents)

Overview

Mr C had objected to a planning application relating to a neighbour's extension¹. This was granted and building work began. Mr C became concerned that the extension did not comply with the planning consent grant, was of poor standard and he objected to an application for a variation of the planning consent submitted by his neighbour. Mr C was also unhappy that he did not receive a final response to his complaints from the Council.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to deal correctly with a planning application and a subsequent application for variation of the application (*not upheld*);
- (b) did not respond appropriately to concerns raised during the building process (*not upheld*); and
- (c) did not respond in full to Mr C's formal complaint (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) enforce to all staff dealing with the public, in relation to planning and building regulation matters, the importance to communicate with them as clearly and accurately as possible;
- (ii) apologise to Mr C for their delay in responding to him and his MSP;
- (iii) review their complaints procedure to ensure that they meet their own standards; and
- (iv) review their procedures for responding to the Ombudsman's office to ensure that they do so without undue delay.

¹ The Ombudsman received a similar complaint from another neighbour about this extension. This is dealt with in report number 200600867.

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

Main Investigation Report

Introduction

1. Mr D submitted a planning application for an extension to his property on 10 February 2005. Mr C objected to this on a number of grounds and said that the extension was in breach of East Dunbartonshire Council (the Council)'s own local plan. Planning permission was granted on 2 August 2005. In April 2006 Mr C contacted the Council again to say that building work had begun in February 2006 and he was concerned about the way this was progressing. He raised a number of specific points of concern in his formal complaint of 9 April 2006 and also said that, when he had telephoned the Council, he had been informed a letter had been sent to him the previous week with revised plans. He said he had not received this.

2. On 16 April 2006 Mr C wrote to the Council to say that he had received the plans. These consisted of proposed alterations to the roof pitch, the repositioning of a window and a change to the external finish, from facing brick roughcast to smooth render with a painted finish. Mr C objected to these and said that he was raising all the objections he had previously raised in 2005. On 27 April 2006 he was informed that the Council had decided that the alterations to the roof pitch and the window would be treated as non-material variations. The proposed change to the finish would not be allowed.

3. On 3 May 2006 Mr C contacted the Council to ask where his formal complaint was in their complaint process. He was told this was at step 2 (the Council's complaints procedure is set out in Annex 2). Mr C also emailed further objections about the Council's decision on the variations. Mr C received an initial response to his complaint from the Head of Planning, dated 4 May 2006. This detailed the Council's understanding of his complaint and answered some specific questions. Mr C was sent the Head of Planning's full response on 8 May 2006. Mr C wrote to the Chief Executive to say he remained unhappy and intended to raise the complaint with the Ombudsman's office. The Head of Planning telephoned Mr C in response to this letter and advised him of the complaints procedure. He had said the next stage would normally be a review by the Corporate Director but that, as he was currently

Acting Corporate Director, this would not be appropriate. He said Mr C's concerns should next be raised with the Chief Executive.²

4. Mr C did this on 6 June 2006. The Chief Executive responded and said that this would be passed to the Acting Corporate Director. This letter was also copied to another Corporate Director with the Council and the Chief Executive asked for a joint response. No response was received by Mr C. Mr C contacted his MSP who pursued his concerns. The Chief Executive agreed to meet the MSP and this took place in October 2006. As a result of this meeting, the Chief Executive agreed to review this complaint. Mr C also wrote, himself, to the Chief Executive on 14 November 2006 to clarify the concerns raised by his MSP. Meanwhile, Mr C had also contacted the Ombudsman's office in August 2006, given the lack of response to his letter of June 2006. When I contacted the Council they informed me this was being dealt with and that they were in discussion with Mr C's MSP. However, on 18 December 2006, as no response had yet been sent to Mr C, the Ombudsman decided to exercise her discretion to consider this complaint before the Council's complaints procedure had been exhausted.

5. The complaints from Mr C which I have investigated are that the Council:
- (a) failed to deal correctly with a planning application and a subsequent application for variation of the application (*not upheld*);
 - (b) did not respond appropriately to concerns raised during the building process (*not upheld*); and
 - (c) did not respond in full to Mr C's formal complaint (*upheld*).

Investigation

6. In investigating this complaint I obtained the correspondence between Mr C and the Council and had sight of documentation relating to the planning application and variation. I considered relevant legislation and guidance. I also made specific enquiries of the Council.

7. 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.

² Mr C's letters were all written to the Chief Executive, who forwarded them to other members of staff to respond to in line with the complaints procedure.

(a) The Council failed to deal correctly with a planning application and a subsequent application for variation of the application; (b) the Council did not respond appropriately to concerns raised during the building process; and (c) the Council did not respond in full to Mr C's formal complaint

8. Mr D submitted a planning application for an extension to his property on 10 February 2005. Mr C objected to the application on a number of grounds. These objections included: the extension was out of proportion to existing buildings and would lead to a terracing effect; light into his property would be reduced; the impact on mature trees would lead to structural damage; there was insufficient parking provision, given the number of bedrooms; there would not be sufficient garden space left; the extension amounted to an increase of greater than 50% of the floor space, which breached the local plan; and the extension would affect the value of his property.

9. Mr C's objections were put before the Planning Board on 2 August 2005, along with the Planning Department (the Department)'s recommendation that this be granted. The report from the Department responded in detail to each one of Mr C's objections. In particular, the report said: there was enough of a gap at the first storey level to prevent a terracing effect; a test had been carried out for the likely impact on light into neighbouring properties and the plans had passed; the garden space would be in line with Council guidance; the trees were not subject to statutory protection and any damage would be a private civil matter; the revised plans did not increase the number of bedrooms; and the effect on neighbouring property values was not a material planning consideration. On the question of the increase in size, while it was accepted that the size increase was contrary to Council's guidance, it was noted that the guidance allowed for flexibility and considering each case on its merit. Having done so, the report noted that the existing garage would be removed, no additional bedrooms were included and it was comparable to the footprint of an extension on a neighbouring property. Planning consent was granted.

10. Mr C contacted a local Councillor about the application. Mr C complained he was aware that the application had been granted but was concerned that he had not been informed of this by the Council. The Councillor wrote to him on 16 September 2005 and said that the Council normally informed objectors of such determinations and apologised for the error. She said the Council were reviewing procedures. The Councillor then dealt with the points that Mr C had raised about the planning application. This largely repeated points made in the Council's report (see paragraph 9). The Councillor did say that if internal

changes to the main house were not undertaken (removal of a bedroom) then the applicant would be in breach of the planning consent. The Councillor said it appeared to her that the Council's procedures were applied correctly but if he remained concerned he could contact the Department.

11. There was no further correspondence between Mr C and the Council until the Council wrote to him on 30 March 2006, informing him that Mr D had made proposed variations to the plans and asking for comments. Mr C said he only received this letter on 7 April 2006. Prior to this, he had been in contact with his neighbour, Mr B, who had informed him the Head of Planning had visited him on 4 April 2006 and mentioned the new plans. Mr C then telephoned the Council and spoke to an officer who told him about the proposed variations. Subsequent to this, Mr C received the letter of 30 March informing him of the proposed variation. The proposed variation related to the roof ridge and the moving of a window.

12. On 9 April 2006 Mr C made a formal complaint (see paragraph 1). He raised his concerns that he had not been informed of the new plans and that they had been sent before the meeting with Mr B. He also said that, now the extension was under construction, that it was clear that his objections were correct. Mr C finished the letter by raising a number of detailed questions.³

13. Following receipt of further revised plans⁴ relating to Mr D's proposed variations, Mr C wrote again to the Chief Executive on 16 April 2006. Mr C said he was unhappy with the standard of the plans and that he was restating all the objections he had raised in 2005. On 27 April 2006 a Senior Planner wrote to Mr C to inform them that the Council had accepted that amendments to the roof and the gable window were minor and could be treated as non-material variations and allowed.

14. On 3 May 2006, Mr C emailed the Chief Executive and asked where his complaint was in the complaints procedure. He complained that the extension was being finished in roughcast. He was informed that his complaint was at stage 2 and being dealt with by the Head of Planning. On 4 May 2006 he emailed again to say he wanted to be sure that the Council's Building Control

³ While I do not set the complaints out in detail here as some refer to matters which are not being dealt with as part of this investigation, I have seen all of these and the detailed response from the Council.

⁴ Following the meeting with Mr B the Council had asked for changes to be made to those originally sent to Mr B and Mr C.

Department would enforce all necessary standards. He was concerned about the standard of the work on the extension, including the size of the garage. He also raised a number of points relating to the Council's response to his complaint.

15. The Head of Planning wrote to Mr C on 4 May 2006 setting out his understanding of Mr C's concerns. He said these would be fully investigated. He also answered some of the questions Mr C had raised in his complaint letter.

16. The Head of Planning's full letter of response was sent on 8 May 2006. He said there was no evidence that local plans had been 'violated'; the garage exceeded the Council's minimum size requirements; problems with the roof had been identified and redesigned; Mr B had been shown the plans and it had been agreed further revisions were needed. The Head of Planning apologised that Mr C had not received notification that the application had been granted; that there had been delays in his receiving mail; and that he had found it difficult to contact senior members of staff. In the letter it was also explained to Mr C that: there was no requirement to notify objectors of decisions, although it was Council policy; post was sent second class as standard; and it was appropriate that a senior manager had asked another member of staff to respond when he had been too busy to do so quickly himself. As stated in paragraph 3, he was advised the next stage in the complaints procedure required him to write to the Chief Executive.

17. Mr C wrote on 6 June 2006 to say he had waited until the building work had been completed and he remained unhappy. He said a flue had appeared which had not been in the original plans. In response to this letter, Mr C was informed this would be dealt with by the Acting Corporate Director and the Chief Executive asked that this be a joint response (see paragraph 3). As stated in paragraph 4, following the MSP's involvement it was agreed the Chief Executive would respond. The MSP wrote to Mr C to confirm that it had been agreed the response would refer to: the planning advice given by the Department; the handling of the variation; the monitoring and enforcement of standards during the building process; and the response of the Council to his and Mr B's concerns. In his letter to the Chief Executive, Mr C repeated the complaints he had raised previously. This included points detailed in paragraphs 8 and 14; also that the original garage had not been demolished and he did not believe that the changes to the internal layout in the plans had been followed.

18. Following the Ombudsman's decision to take this complaint before it had completed the complaints procedure (see paragraph 4), the Council were asked to respond to the matters under investigation. In their response the Council said that they were satisfied that they had acted appropriately in responding to Mr C's objections at both the initial planning and planning variation stage. They said that they had enforced the conditions on the planning consent appropriately and that there was no condition requiring the demolition of the garage. There was also no requirement in planning law to control internal changes to the level of detail requested by Mr C. I have seen the consent granted which did not list the demolition of the garage as a condition. However, there was also a letter in the file provided to me which showed that the planner had raised the question of demolition of the garage with Mr D's architects in a letter dated 31 July 2006. The planner had said that planning permission was granted on the basis that this be demolished and the demolition was reflected in the approved plans. The architects confirmed to the Council they intended to do so and Mr C has confirmed the garage was demolished.

19. Mr C had also expressed concerns about compliance with building standards. At the time of drafting of this report, the Council confirmed that a completion certificate had not yet been applied for. The building warrant for the work was valid until May 2008.⁵ Any matters which were not in accordance with the warrant would need regularised before a completion certificate could be granted. When considering the completion certificate, building standards officers would consider any concerns that had been raised and brought to their attention. It was the responsibility of the applicant to ensure that the building complied with the building regulations and they would need to demonstrate this before a completion certificate could be issued. A letter on file from Mr D's architects showed that he was aware that the amendments already accepted by the planners would require an application to amend the building warrant.

20. The Council also said that, under their enforcement policy, they had discretion to decide whether work that had not been unauthorised by the warrant could continue once they became aware of this. They said that they were not aware of any work which differed from the warrant plans other than marginally. They confirmed that the wall did not require a particular finish to

⁵ Building Standards are dealt with separately from planning. Prior to starting certain works a building warrant is required. Once completed, a completion certificate is applied for. This must show that the work complies with both building regulations and the original warrant. If changes have been made a variation to the warrant can be applied for.

meet building regulation requirements. The Council said that the wall was still in an unfinished condition but that this was because of difficulties with access which could only be resolved between Mr D and Mr B. If this was not achieved they confirmed that an application could be made to vary the building warrant to allow the partial finish to be removed.

21. In their response the Chief Executive apologised for the delay and said that the 'handling of this particular complaint has not been discharged within the agreed timescales and that this has been unhelpful and unsatisfactory'. She explained that, while it did not excuse the delay, the Council had been undergoing a significant period of change within the management structure.

(a) and (b) Conclusion

22. Mr C clearly remains unhappy that planning permission was granted. However, the details of the planning report show that all Mr C's objections were considered during the planning application process. The Council also informed him of the proposed variations and explained clearly to Mr C that the variations requested were non-material variations and did not require full planning permission. They apologised for not informing him that the application had been granted and for a delay in the mail. There is evidence that the Council have consistently responded to the matters raised by Mr C that relate to the compliance of the building with the planning permission. They have contacted Mr D and his architects when they felt the concerns raised required action.

23. The Council have also confirmed the responsibility for ensuring the building complies with building regulations remains with Mr D. The question of compliance with building regulations and the building warrant are dealt with under the process for applying for a completion certificate.

24. I was concerned that the letter from the Councillor of 16 September 2005 (see paragraph 10) implied that matters relating to the application could be enforced by the Council, when it appears that they may not be able to do so.⁶

25. The letter from the Chief Executive also states they could not enforce the demolition of the garage but this appears to be contradicted by a letter on file from their planning officer to Mr D's architects. Planning and building regulations and the enforcement of these are complex and this may simply

⁶ The Councillor said this information had been supplied by Council officers.

reflect that fact. In any event, the garage has been demolished. While I am not upholding any aspect of the complaint on this apparent contradiction, the Ombudsman is recommending that the Council reinforce to all staff dealing with complaints the importance of communicating clearly.

26. Despite this concern, my investigation has shown that the Council's response to his objections to both the application and variation was appropriate. In the circumstances, I do not uphold Mr C's complaints.

(a) and (b) Recommendation

27. The Ombudsman recommends that the Council enforce to all staff dealing with the public, in relation to planning and building regulation matters, the importance to communicate with them as clearly and accurately as possible.

(c) Conclusion

28. I have already said that the failure to complete this process meant that Mr C was not informed of the reasons behind the delay in completing the works. The Council have failed to provide a response to either Mr C's letter of 6 June 2006 or to the concerns raised by his MSP in October as agreed.

29. While the Council have provided explanations for this delay, they have accepted these are not excuses and admitted, without reservation, to their failings in the handling of this complaint. I commend them for doing so. I have also noted that similar complaints were being raised by a second complainant who Mr C referred to and supported and that this made this a more complicated complaint than normal. However, the Council's failure to fulfil the requirements of their own complaints procedure was a failing and, in the circumstances, I uphold this complaint.

(c) Recommendation

30. The Ombudsman recommends that the Council:

- (i) apologise to Mr C for their delay in responding to him and his MSP;
- (ii) review their complaints procedure to ensure that they meet their own standards; and
- (iii) review their procedures for responding to the Ombudsman's office to ensure that they do so without undue delay.

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

21 November 2007

Explanation of abbreviations used

Mr C	The complainant
Mr D	The applicant
Mr B	A neighbour of Mr C, who also submitted a complaint to the Ombudsman
The Council	East Dunbartonshire Council
The Department	The Planning Department

East Dunbartonshire Complaints Procedure ⁷

Stage 1:

Informal: normally verbal complaints responded to by the staff involved. If the person making the complaint is not satisfied with the response they should be informed they are entitled to make a formal complaint.

Stage 2:

Formal Investigation: On receipt of a formal complaint an acknowledgement is to be sent within five working days and a full response within 20 working days. This can be extended if this is complex and the complainant should be informed of this and when a response will be likely. At this stage the response should be by the Head of Service or Nominated Officer.

Stage 3:

Review: If they remain unsatisfied, complainants should be advised they have a right to request a review from the relevant Strategic Director. They should be asked to request a review within ten working days of the date of the formal response. The same time limits apply as for stage 2. The response could come from a nominated officer.

Stage 4:

Appeal: If they remain unsatisfied, complainants have a right to appeal to the Chief Executive. Again they should be advised to do so within ten working days and the same time limits apply for the response as stage 2. The response could come from a nominated officer.

⁷ The information in this annex is my own summary of East Dunbartonshire's procedure and sets out the main stages and relevant guidance relating to these.