

Scottish Parliament Region: Mid Scotland and Fife

Case 200603238: Perth and Kinross Council

Summary of Investigation

Category

Local government: Planning; Handling of application complaint by opponent

Overview

The complainant (Mr C) raised a number of concerns about the handling by Perth and Kinross Council (the Council) of a planning application (the Application) for the residential development of an adjacent site which was determined by their Development Control Committee (the Committee) on 17 January 2007.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to request that amended plans submitted by the applicant in September 2006 were the subject of further neighbour notification (*not upheld*);
- (b) although Mr C had himself submitted objections to earlier proposals on 17 July 2006, he was not personally informed that the Application would be considered by the Committee on 17 January 2007 (*not upheld*); and
- (c) the report to the Committee made reference to Mr C's letter of objection although he was not notified of the plans subsequently submitted and considered (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendation to make.

Main Investigation Report

Introduction

1. Mr C resides in a town in Perthshire. His house lies close to an area of land which had been identified in the Strathearn Local Plan as a housing site capable of accommodating 100 units and had been subject to a number of planning permissions. Full planning consent was granted in 1999 for the road network in the area and the plot layout. In 2005 a further application for full consent was submitted for seven large houses on part of the wider area closest to Mr C's home. The complainant's wife, Mrs C, objected to that application in a letter of 22 January 2005. That application was approved but was not implemented. A further application (the Application) was submitted for the residential development of 13 houses on the same site on 20 March 2006. Mr and Mrs C as owners and occupiers of their home were identified as having been neighbour notified. Mrs C submitted a letter of objection to the proposals in a letter of 3 April 2006 on grounds of the height and density of the proposed houses causing overshadowing and overlooking, likely noise nuisance, and the possibility that mature trees would be endangered. An objection was submitted by another neighbour on 29 March 2006. The local community council informed Perth and Kinross Council (the Council) by letter of 3 April 2006 that they had no objections to the proposals. Mr C was not an initial objector.

2. Mr C understood that two sets of amended plans relating to the Application were subsequently submitted by the applicant. After receiving a further neighbour notification on 5 July 2006, Mr C inspected the amended plans, found that the number of proposed houses had increased and submitted an objection to those proposals in a letter of 17 July 2006.

3. On 22 September 2006, amended plans were submitted reducing the number of houses for which permission was being sought in the Application from 13 to 11. The planning case officer (Officer 1) did not require a further neighbour notification to be carried out.

4. The Council wrote to Mrs C (but not Mr C) on 8 January 2007 informing her that the Application would be considered by the Council's Development Control Committee (the Committee) on 17 January 2007 and that Officer 1's report (of 19 December 2006) was available to inspect on the Council's planning portal on the internet or at their offices. Mrs C was informed of her entitlement to attend and how she might ask to address the Committee on her objections to

the proposal. This intimation gave the wrong day of the week for the meeting but was corrected by a further letter sent to Mrs C the following day. No letter was sent to Mr C intimating the Committee meeting which would consider the Application.

5. Mr C wrote to Officer 1 on 14 January 2007 complaining of what he saw as confusion in the neighbour notification procedure and expressed his concern that he had not received notification of the set of plans which would be considered by the Committee on 17 January 2007. The process of intimation to previous objectors had in his view been selective and improper. He asked that consideration of the Application be put on hold until proper neighbour notification had been carried out. Consent for the Application was granted by the Committee on 17 January 2007 and the planning consent was issued on 4 February 2007.

6. The complaints from Mr C which I have investigated are that:

- (a) the Council failed to request that amended plans submitted by the applicant in September 2006 were the subject of further neighbour notification;
- (b) although Mr C had himself submitted objections to earlier proposals on 17 July 2006, he was not personally informed that the Application would be considered by the Committee on 17 January 2007; and
- (c) the report to the Committee made reference to Mr C's letter of objection although he was not notified of the plans subsequently submitted and considered

Investigation

7. The investigation is based on information provided by Mr C and the Council's response to my enquiries. I also visited the Council's offices, inspected relevant plans, and interviewed Officer 1. 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 failed to request that amended plans submitted by the applicant in September 2006 were the subject of further neighbour notification

8. In responding on 30 January 2007 to Mr C's letter of 14 January 2007, the Council's then Head of Development Standards (Officer 2) stated that, until the

new Planning etc (Scotland) Act 2006 comes into force, neighbour notification is the responsibility of the applicant. Officer 2 also stated that, if after negotiation with an applicant, the original plans are amended, it was at the discretion of the planning authority to decide whether any such amendment was so significant as to require re-notification of neighbours.

9. Mr C replied on 6 February 2007 and Officer 2 responded on 19 February 2007 providing Mr C with additional information. He stated that the applicant's proposals for 13 houses submitted on 20 March 2006 were replaced by amended plans submitted on 22 September 2006 for 11 houses. Officer 1 did not consider that these amended plans required re-notification of neighbours. No further explanation was proffered.

10. At my visit to the Council's offices I was shown copies of relevant plans. It was apparent from these that not only did the proposals submitted on 22 September 2006 proposals incorporate a reduction in density from 13 houses to 11 houses but also the site layout was changed resulting in the proposed houses being positioned about a metre further away from the boundary with Mr C's land than had been the case with the April 2006 submission (and, incidentally, the extant approval for seven houses). The height of the proposed houses (8.9 metres) remained the same.

(a) Conclusion

11. A reduction in density of proposed houses on the site from 13 houses to 11 houses would normally be seen as less disadvantageous to a neighbouring property. That is not, however, always the case. Site layout changes can be effected which might increase the impact peripheral houses have on neighbouring property owners. From my inspection of the plans, it is clear that the later plans showed the nearest houses to be further away from Mr C's house than the plans in respect of which he was notified in March 2006. I consider it was, therefore, an acceptable use of Officer 1's discretion in the particular circumstances not to require re-notification. Although I consider the position could have been better explained to Mr C by Officer 2, I do not see evidence of administrative shortcoming or service failure and I am, therefore, unable to uphold the complaint.

(b) Although Mr C had himself submitted objections to earlier proposals on 17 July 2006, he was not personally informed that the Application would be considered by the Committee on 17 January 2007

12. At my visit to the Council's offices, I established that the neighbour notification Mr C received on 5 July 2006 was in fact in relation to a third separate application for the site seeking permission for a mews type development at a much higher density than the Application. Mr C's letter of objection of 17 July 2006 was filed on the separate application file. That application was withdrawn by the applicant by letter of 25 July 2006.

13. In his response to Mr C of 30 January 2007 (paragraph 8), Officer 2 stated that the letters of 8 and 9 January 2007 from the Council to Mrs C (paragraph 4) were not a neighbour notification but rather a courtesy intimation to those who had submitted representations on the Application (and the applicant) that it was being referred to a public meeting of the Committee.

(b) Conclusion

14. Mr C was clearly never an objector to the Application but his wife was and, in accordance with the Council's practice, she was sent a courtesy intimation by the Council of when the Committee would meet to consider the Application. Mrs C obviously informed Mr C that she had received the Council's letter of 8 January 2007 since he wrote to the Council on 14 January 2007. In terms of the Council's procedures, since Mr C was not regarded as an objector, he did not require to receive a personal intimation of the committee consideration of the Application. I am, therefore, unable to uphold the complaint.

(c) The report to the Committee made reference to Mr C's letter of objection although he was not notified of the plans subsequently submitted and considered

15. Officer 1's report of 19 December 2006 to the Committee under the heading of Representations stated that two letters of objection had been received from local residents regarding: loss of amenity to neighbouring properties, effect on neighbouring trees, increased volumes of traffic and on street parking, impact on biodiversity, surface water drainage from the site, and high density of housing. The report also stated that 'a third letter of objection was received but this related to a proposed amendment to the application which was never formally incorporated into the plans'. The issues raised in the two letters of objection were then appraised by Officer 1 in the report.

16. At interview, Officer 1 informed me that the reference in the report to the 'third letter of objection' referred not to Mr C's letter of 17 July 2006 but to another letter of objection dated 24 July 2006, submitted by one of Mr C's neighbours which in error quoted the reference number of the Application in responding to the neighbour notification of 5 July 2006. As stated, that application was withdrawn by the applicant (paragraph 12).

(c) Conclusion

17. I am satisfied that the reference in the report on the Application to the third letter of objection does not relate to Mr C's letter of 17 July 2006. As previously stated, Mr C's letter was correctly filed with the papers for a different application which was subsequently withdrawn within days. I do not uphold this complaint.

21 November 2007

Explanation of abbreviations used

Mr C	The complainant
Mrs C	The complainant's wife
The Application	The application for full consent for the residential development of a site adjacent to Mr and Mrs C's home
The Council	Perth and Kinross Council
Officer 1	The planning case officer
The Committee	The Council's Development Control Committee
Officer 2	The Council's former Head of Development Standards