

Scottish Parliament Region: Central Scotland

Case 200500791: Falkirk Council

Summary of Investigation

Category

Local government: Planning

Overview

The complainant, Mrs C, raised a number of concerns regarding Falkirk Council (the Council)'s consideration of her objections to a planning application in respect of an extension to a neighbouring property. Mrs C believes that the Council failed to provide accurate information when considering the application and also provided inaccurate information to her concerning the details of her local Councillor.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to properly consider the potential issues of overshadowing and loss of amenity caused by the extension (*not upheld*);
- (b) planning officers failed to consider the impact of the development on the surrounding conservation area (*not upheld*);
- (c) the planning report on which the decision to grant consent was based was inaccurate as it was considered that a neighbouring area of ground contained trees protected under a Tree Preservation Order when they did not (*not upheld*);
- (d) the development would establish an unacceptable precedent (*not upheld*);
- (e) the Council held inaccurate records on Councillors details (*not upheld*);
- (f) planning officers failed to refer the application to committee (*not upheld*);
and
- (g) the extension was contrary to the Local Plan (*not upheld*);

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 24 May 2005 the Ombudsman received a complaint from a member of the public (referred to in this report as Mrs C) that Falkirk Council (the Council) failed to correctly consider their objections to a planning application in respect of an extension to a neighbouring property. Mrs C also believes that the Council failed to provide accurate information when considering the application and also provided inaccurate information to her concerning the details of her local councillor.

2. Mrs C raised her complaint with the Council in line with their formal complaints procedure culminating in a final response from the Chief Executive.

3. The complaints from Mrs C which I have investigated are that:

- (a) the Council failed to properly consider the potential issues of overshadowing and loss of amenity caused by the extension;
- (b) planning officers failed to consider the impact of the development on the surrounding conservation area;
- (c) the planning report on which the decision to grant consent was based was inaccurate as it was considered that a neighbouring area of ground contained trees protected under a Tree Preservation Order when they did not;
- (d) the development would establish an unacceptable precedent;
- (e) the Council held inaccurate records on Councillors details;
- (f) planning officers failed to refer the application to committee; and
- (g) the extension was contrary to the Local Plan.

Investigation

4. I have reviewed the correspondence provided by the complainant and have obtained correspondence from the Council including the relevant plans and reports in respect of the planning application. I have also reviewed the relevant legislation, planning policies and the local plans. I have set out for each of the main headings of Mrs C's complaint my findings of fact and conclusions. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

5. Mr and Mrs C's neighbours Mr and Mrs A submitted an application for planning consent to the Council for the demolition of their existing conservatory and construction of a two storey extension above an existing ground floor utility room and on the site of the demolished conservatory.

6. The Falkirk Local Plan (the Local Plan) details the policies which are used by the Council to provide guidance for development in the local area. The policies detailed in the Local Plan which have relevance to this development are Policy FAL 5.7 'Extensions and Alterations to Residential Properties' and Policy FAL 3.11 'Conservation Areas'.

7. Policy FAL 5.7 states that:

'The Council will require that extensions and alterations to residential properties respect the original building, neighbouring properties and the character of the area in general, in terms of scale, design and materials. Proposals for garages should generally not project beyond the front elevation of the house and should have external finishes that match those of the existing house.'

8. Policy FAL 3.11 states that:

'The Council will protect the visual amenity and historic character of each Conservation Area, including its setting, buildings, open space and trees. Favourable consideration will only be given to proposals which make a positive contribution to the appearance of the Conservation Area and are compatible with the historic character in terms of size, scale, design and materials. The Council will give priority to a review of the boundaries of the Falkirk Town Centre Conservation Area.'

(a) The Council failed to properly consider the potential issues of overshadowing and loss of amenity caused by the extension

9. In their letters of 29 April 2004 and 14 June 2004 Mrs C and her husband Mr C detail their objections to the proposed development. A principal objection was that the development would cause significant overshadowing and loss of amenity.

10. Mrs C has stated that the scale of this development causes a significant loss of sunlight to her conservatory and garden. This in turn results in a substantial loss of amenity at her home. In response to these concerns, a planning officer visited the site on 6 July 2004 to carry out an assessment into

the impact of the development on the level of light and potential overshadowing caused to Mrs C by the development.

11. In the records of this visit the planning officer details that the gardens in question are north facing. He notes that the gardens of the houses beside the development site would get sunlight from the west in the evening. He details that there is a landscaped area at the junction of the street where the development would take place which contains trees protected under the terms of a Tree Preservation Order. It is the planning officer's view that this would limit the enjoyment of sunlight to the rear gardens.

12. The planning officer was in fact incorrect in his assumption that these trees were covered by a Tree Preservation Order, after further investigation it became clear that they were not.

13. When informed of the grounds of objection and at the suggestion of the planning department Mr and Mrs A agreed to amend the plans to include the introduction of a 'hipped' gable design. This reduced the amount of sunlight loss in neighbouring properties.

(a) Conclusion

14. It is clear that the planning officer's consideration of the application in respect of sunlight was based on his view that the mature tree planting already affected the level of direct sunlight into the surrounding gardens. He did consider that there would be an adverse impact on the level of sunlight if permission for this development was granted. While Mrs C does not find the loss of sunlight acceptable, the planning officer reached the professional opinion that it was acceptable in planning terms. I see no evidence to support the view that he did not give this issue an appropriate level of consideration. As a result of this I do not uphold this aspect of the complaint.

(a) Recommendation

15. The Ombudsman makes no recommendation on this issue.

(b) Planning officers failed to consider the impact of the development on the surrounding conservation area

16. Mrs C contends that this proposal directly contravenes the Local Plan in terms of the general development and the commitment detailed in the Local

Plan to 'preserve the visual amenity of each conservation area including its setting, buildings and open space'.

17. Additionally, Mrs C considers that planning officers failed to take into account the size of the garden once the development has taken place. She states that the remaining area of garden would not be of an appropriate size for a house in a conservation area. She further states that planning officers had advised that the garden area had not been measured and yet they concluded that there would be a sufficient area remaining after completion of the development.

18. As detailed previously, the planning officer considered this development against the provisions in respect of conservation areas as detailed in the Local Plan (Policy FAL 3.11).

19. The Council have advised that there are no restrictions in the relevant planning legislation in respect of the size of garden areas. They also point out that they consider the development complied with the relevant sections on conservation areas as detailed in the Local Plan.

20. It is clear from the report produced by the planning officer in respect of this development that they did give consideration to the impact of the development on the conservation area. Mrs C questions planning officers interpretation of the terms used in the Local Plan and in particular, the impact of the development on the townscape. The planning officer has stated in the report that he considers that the proposal does not affect the visual amenity and historic character of the conservation area and as such, accords with the Local Plan.

(b) Conclusion

21. I have examined the documentation relating to this development and considered whether the Council did ensure that the proposals were appropriate and complied with the Local Plan. I have not seen evidence of maladministration or service failure in the way that planning officers reached their decisions and, therefore, do not uphold this aspect of the complaint.

(b) Recommendation

22. The Ombudsman makes no recommendation on this issue.

(c) The planning report on which the decision to grant consent was based was inaccurate as it was considered that a neighbouring area of ground contained trees protected under a Tree Preservation Order when they did not

23. It is clear that when considering the issue of overshadowing the planning officer made assumptions concerning the status of the tree planting in landscaped area next to the development area. In the notes of his site visit he details that the trees in this area are protected by a Tree Preservation Order when in fact they were not. However, in the response to Mrs C's complaint on this point the Council have stated that 'no reference to the permanence or otherwise of this landscaping is made nor assumed in the delegated report'. I have reviewed the planning report and this is the case. The existence of the trees was detailed, but not their permanence.

24. Since the planning application was approved, the Council has been pursuing a Tree Preservation Order on this site. Despite issues concerning ownership of the land, the Council have claimed that a satisfactory order is now in place.

(c) Conclusion

25. Whilst the planning officer initially believed that these trees were covered by a Tree Preservation Order, this was not considered in the planning report itself. As no mention of the permanence or otherwise of the trees was made in the report, I do not believe that this issue had any implications for the consideration of the planning application. For this reasons I do not uphold this aspect of the complaint.

(c) Recommendation

26. The Ombudsman makes no recommendation on this issue.

(d) The development would establish an unacceptable precedent

27. The development considered by planning officers was considered against the policies in the Local Plan. The Council have stated that they consider every application received on their individual merits and against the provisions of the Local Plan. The Council do not believe that this would cause an unacceptable precedent.

(d) Conclusion

28. Providing the Council considers each application on its merits, the issue of precedent should not arise. In this case it is clear that the Council has considered the application against the provisions of the Local Plan. I am, therefore, unable to uphold this aspect of the complaint.

(d) Recommendation

29. The Ombudsman makes no recommendation on this issue.

(e) The Council held inaccurate records on Councillors details

30. Prior to consideration of this planning application, Mrs C obtained details from the Council's website of her local Councillor. This was to try to obtain her Councillor's support for her objections to the planning application. Mrs C sent an email to the Councillor's email address as provided on the Council's website.

31. No response was received to this email. The reason why no reply was received was because the details obtained from the Council's website related to Mrs C's previous Councillor who sadly had died. No mechanism was in place to allow for email correspondence to be forwarded to Mrs C's new Councillor.

32. Mrs C believes that the Council's failure to provide accurate contact details of her current Councillor meant that she could not make use of her right to request support from her Councillor.

33. The Council have admitted that due to a technical problem, archived details of the deceased Councillor could still be accessed if a specific search facility on the Council's website was used. The Council had amended the system the day after the Councillor's death and again on the day after the election of the new Councillor to properly reflect the correct information. This was available in the main directory on the system. The Council have, however, advised that there was a problem when the system was accessed in a specific way. The Council have advised that this was the only time this problem had arisen and they took immediate action to remedy the situation. The Chief Executive provided her apologies to Mrs C for any inconvenience this error had caused.

34. In response to this aspect of her complaint, the Council have advised that local Councillors are made aware of all forthcoming planning applications where they are detailed in the Council's Weekly List. If a Councillor had a particular

concern about an application they would be able to obtain further information from the relevant planning officer and if required, request that the Director of Development Services consider referring the matter to the Regulatory Committee.

35. Under the terms of the Council's Standing Orders the Director of Development Services is authorised, by the Scheme of Delegation, to determine all applications for planning permission. If, however, there are circumstances which make an application 'controversial', an application may be referred to the Regulatory Committee for their consideration.

36. With regard to the question of objections to any planning application, the Director of Development Services must be satisfied that there is a substantial body of valid objections in terms of planning competency or in terms of the factual accuracy of the objections which cannot be adequately addressed by conditions to the planning consent or through analysis of their impact and accuracy by officers, before determining whether the application is one which requires to be put before the members of the Regulatory Committee.

37. Whilst the significant majority of planning applications are dealt with by officers under the Council's delegated authority, Councillors can request, if they believe the objections warrant such treatment, that applications are referred to the Regulatory Committee for consideration. There is no automatic referral to the Committee on the request of the local member.

38. Mrs C has stated that as she was not provided with accurate Councillor's details, she lost the opportunity to secure her Councillor's support to have the matter referred to the Regulatory Committee.

(e) Conclusion

39. The Council resolved the issue of the incorrect Councillor information as soon as they were aware of the problem. They also provided an apology for this error.

40. Despite the computer problem I do not consider that Mrs C lost the opportunity to secure her Councillors support or that this support would have guaranteed referral to the Regulatory Committee. A list detailing all planning applications was circulated to Councillors on the Council's Weekly List so all Councillors were made aware of pending applications. In addition, Mrs C could

have obtained her Councillors details from elsewhere. Whilst an error was acknowledged by the Council, this was addressed as soon as they became aware of the problem. As a result I do not uphold this aspect of the complaint. In addition I do not consider that this had any significant impact on the consideration of Mrs C's planning objections.

(e) Recommendation

41. The Ombudsman has no recommendations to make on this point.

(f) Planning officers failed to refer the application to committee

42. As detailed in complaint (e), planning applications are usually considered by planning officers under delegated authority. Under the Council's Scheme of Delegation to officers, the Director of Development Services has the authority to determine certain categories of planning applications. This authority can further be delegated from the Director, to Development Control Managers under the terms of paragraph 7 of part 3 of the Council's Standing Order's, Scheme of Delegation to officers.

43. Planning Officers considered this application under their delegated authority. They did not believe that the application was controversial or required to be referred to the Regulatory Committee. The Development Control Manager considered that there had not been objections received by the Council which were either, after examination and analysis by the planning officer, valid planning issues or which could not be addressed by conditions attached to any consent. Additionally, he considered that the application complied with the provisions of the Local Plan.

(f) Conclusion

44. As detailed above, the planning officer was authorised under the terms of the Scheme of Delegation to grant consent for the development. As such, I do not uphold this aspect of the complaint.

(f) Recommendation

45. The Ombudsman makes no recommendations on this point.

(g) The extension was contrary to the Local Plan

46. The Local Plan provides guidelines for development in an authority's area. In the case of this planning application planning officers considered whether or

not the development complied with the Local Plan. Sections of the Local Plan relevant to the application were detailed in the planning report.

(g) Conclusion

47. From my review of the information available, I believe that planning officers have appropriately identified which aspects of the Local Plan are relevant in this case and have shown that they have taken appropriate account of these when considering the application. Planning officers were of the view that the development complied with the terms of the Local Plan, I see not evidence to suggest otherwise. As a result of this, I do not uphold this aspect of the complaint.

(g) Recommendation

48. The Ombudsman makes no recommendations on this point.

49. 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.

19 December 2007

Explanation of abbreviations used

Mrs C	The complainant
Mr C	Mrs C's husband
The Council	Falkirk Council
Mr and Mrs A	Mr and Mrs C's neighbours
The Local Plan	The Falkirk Local Plan