

Scottish Parliament Region: North East Scotland

Case 200501215: Aberdeen City Council

Summary of Investigation

Category

Local government: Planning; Handling of objections

Overview

The complainant (Mr C) raised a number of concerns about Aberdeen City Council (the Council)'s handling of his objection to his neighbours planning application for an extension to the neighbouring property.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) failure to consider Mr C's request for a site visit by the Committee (*upheld*);
- (b) dissatisfaction with the formal reply to Mr C's complaint about the failure to consider the site visit request (*not upheld*); and
- (c) failure to consider the planning application properly (*not upheld*).

Redress and recommendation

The Ombudsman recommends that the Council ensure that appropriate procedures are in place so that the Committee is made aware of any requests for site visits that are made, and responds to them appropriately.

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

Main Investigation Report

Introduction

1. The Ombudsman received a complaint from Mr C on 15 August 2005 about Aberdeen City Council (the Council)'s decision to grant planning permission to his neighbour and the way they had handled his complaint about the decision.

2. On 29 March 2005 Mr C registered his formal objection to a planning application made by his neighbour to build a single storey extension to the side and rear of the property. Mr C asked his local Councillor (Councillor 1) to request the Convenor (Councillor 2) of the Planning Committee (the Committee) to consider a site visit in light of the objections; however, a site visit was not made.

3. The application was approved unconditionally on 19 May 2005 and Mr C was notified on 24 May 2005.

4. Mr C then complained to the Council on 30 May 2005 about the decision and the lack of a site visit.

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

- (a) failure to consider Mr C's request for a site visit by the Committee;
- (b) dissatisfaction with the formal reply to Mr C's complaint about the failure to consider the site visit request; and
- (c) failure to consider the planning application properly.

Investigation

6. In investigating this complaint I have had read the correspondence between Mr C and the Council including the detailed objections and the planning report. I have also made enquiries of the Council and had access to the guidelines used by the planning officer in compiling the report, as well as the planning report itself.

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.

(a) Failure to consider Mr C's request for a site visit by the Committee

8. Following his written objection to the Committee Mr C approached Councillor 1 to ask her to contact the Committee requesting that a site visit be conducted before any decision on the application was made. This she did on 26 April 2005 in writing to Councillor 2. The recommendation to unconditionally approve the application was made on 19 May 2005 without a site visit being conducted.

9. Following a complaint to the Council about the recommendation Mr C was informed on 8 June 2005 that there had been no request for a site visit. He responded to this stating that Councillor 1 had sent a request but that her letter did not reach the relevant person.

10. On 23 June 2005 Mr C then wrote to the Lord Provost enclosing a copy of Councillor 1's letter to Councillor 2 and stating that Councillor 2 had confirmed receipt of the letter to Councillor 1. Mr C said that in his opinion Councillor 2's failure to notify the Committee of the letter amounted to 'gross negligence' and 'gross injustice'.

11. Councillor 2 responded directly to Mr C on 28 July 2005. Councillor 2 confirmed that he had received Councillor 1's letter requesting a site visit and that such a visit was subject to approval from the whole committee. He went on to say due to human error he mixed up the application with another and subsequently he failed to bring Councillor 1's letter to the attention of the Committee.

12. Councillor 2 apologised for this error, but stated that he objected to the terms 'gross negligence' and 'gross injustice', pointing out that a site visit has no legal standing in the planning process, but that it can be a tool used by the Committee when requested. Councillor 2 went onto say that there was no guarantee that a site visit would have changed the Committee's view, and that neither the applicant nor the objector is permitted speak at such a visit. In summary he states that there is no guarantee a site visit would have changed the view of members of the Committee and the application was correctly determined. The application was recommended for unconditional approval and no member of the Committee present moved for a visit or refusal.

13. Following written enquiries of the Council the response from the Chief Executive reiterates this point and further states that the Council have no written

policy or guidelines on the request of site visits as they are simply an informal tool. The Chief Executive also stated that only a relatively small number of planning applications are determined following a site visit and in the majority of those cases, the recommendation does not change from the planning officers report. In addition the Committee approved the application without any questions or debate.

(a) Conclusion

14. From the correspondence it is clear that as far as Mr C is concerned his objections to the application hinged on a site visit. However, there is no obligation on a committee to agree to a site visit and there is no evidence to suggest that the Committee would have given a different recommendation had they made a site visit. Whilst it is possible that a site visit could have resulted in conditions being placed on the planning permission which may have addressed some of Mr C's concerns, this is by no means guaranteed.

15. Councillor 2 has admitted that his error led to the Committee not being advised of the site visit request and has apologised for this. Councillor 2 was acting in an administrative capacity on behalf of the Council, rather than pastoral or political capacity as a Councillor. In this context the failure to bring Councillor 1's letter to the attention of the Committee for their consideration constitutes maladministration. I, therefore, uphold this complaint.

(a) Recommendation

16. The Ombudsman recommends that the Council ensure that appropriate procedures are in place so that the Committee is made aware of any requests for site visits that are made, and responds to them appropriately.

(b) Dissatisfaction with the formal reply to Mr C's complaint about the failure to consider the site visit request

17. Mr C was dissatisfied with the formal reply to his complaint in that he found the tone of Councillor 2's written response objectionable and was unhappy with the length of time that it took for Councillor 2 to reply. Mr C's letter of complaint addressed to the Lord Provost and copied to Councillor 2 was dated 20 June 2005 and Councillor 2's response was dated 28 July 2005.

18. In his response Councillor 2 apologised for delay in replying. He goes on to confirm that he did receive the letter from Councillor 1 but states that:

'Unfortunately on the day I did not call for the site visit asked for by the local member. This was because I had mixed up the application with another.'

As stated above Councillor 2 explained that the failure to inform the Committee about the site visit request was due to his 'human error'.

19. The Chief Executive's response to Mr C dated 13 September 2005 stated that Councillor 1 had asked Councillor 2 to call for a sub-committee site visit; however, this was 'quite simply overlooked in the pressure of Committee business.'

20. Mr C believes that the two responses contradict each other in that Councillor 2 states there was a mix up with the applications and the Chief Executive states the request was overlooked.

(b) Conclusion

21. Mr C was unhappy with the tone and content of the responses. Councillor 2's response apologised for the error and clearly explained the purpose and standing of a site visit. The response appears to be factual and clear, whilst Mr C may disagree with Councillor 2's explanations I am satisfied that Mr C's concerns were dealt with appropriately.

22. Mr C was also concerned about the apparent discrepancies in the explanations given by Councillor 2 and the Chief Executive about the lack of a site visit. Whilst I can see that the two responses could be construed as being different, I think it is unlikely that this was a deliberate attempt to mislead Mr C, but rather a different way of phrasing the explanation of human error. Therefore, I do not uphold this complaint.

(c) Failure to consider the planning application properly

23. In his letter of 29 March 2005 Mr C raised six points of objection to the planning application:

- the application submitted would raise the coped boundary wall by approximately 1.2m, obscuring Mr C's recently built sun room by 900mm;
- the front of the extension would protrude approximately 1.2m affecting the aesthetics of the neighbouring houses and light to Mr C's lounge;
- the width between the two properties on the plan was incorrect and did not take into account Mr C's chimneybreast. Mr C went onto state that the

width between the two houses was already narrow, but with the proposed extension it would become like a 'narrow damp tunnel' making access to repair the walls, slabbing and television receiver impossible;

- aesthetically the appearance of his detached house would be impaired;
- Mr C questioned why a garage was included in the plan when one was already established at the rear, with no mention of demolition; and
- Mr C also raised concerns about the difference in ground level between the properties and whether the proposed extension would affect the foundation, drainage and services to his house.

24. Following notification from the Council that the application had been approved, Mr C sent a letter of complaint on 30 May 2005 to the City Development Services in which he refers to his architect complaining about an omission on the planning application relating to the chimneybreast on Mr C's property.

25. On 8 June 2005 the Council responded with a copy of the planning report; which confirmed Mr C's objections had been circulated and were addressed in the planning report which was considered by the Committee.

26. Mr C responded to the Council on 20 June 2005 stating that he remained dissatisfied with the decision to grant the application and the Council's response. He stated that Mrs C was partially disabled and that this should have been taken into consideration in light of the narrow width between the two properties. He stated his wish to appeal against the decision and to have his points addressed.

27. The Council's final response to Mr C dated 13 September 2005 accepted that the planning application drawings did not show the chimneybreast of Mr C's house. However, the drawings did show the position of the boundary walls, which was the information, required for consideration of the application. In May 2005 Mr C's architect rang the planning officer prior to the Committee meeting to highlight that the chimneybreast was not shown on the plans. The planning officer explained that the information that was shown was sufficient for the purposes of determining the application. The Council went on to state that ensuring disabled access down the gable of the property was not a material consideration in determining the application.

28. The Council then addressed the two alleged errors Mr C had identified in the planning report.

Daylight calculations

29. The computer package used at the time the application was assessed was called 'Sketchup'. This package used ordinance survey and astronomical data to calculate the position of the sun at any given time and worked in the same way as the Building Research Establishment guidance, which the Council now uses. The Council explained that 'Sketchup' assumed that all sites were level and did not allow for the manual input of levels. They pointed out that the package was simply one way of assessing the shadow impact and in this case as the application site was lower down than Mr C's property the impact would be slightly less than that calculated by 'Sketchup', which stated that the sun would have passed behind the existing building by 09:00 at any time of year.

30. Mr C accepted that the lower level of the site would be to his advantage. However, he maintains that the sun does not go behind the existing building until around 13:00 and that there must be an error in the calculations. On making further enquiries of the Council it has been established that no results for the calculations are stored and no print outs are made. In addition the Council have stated that they no longer use the 'Sketchup' package and now use a hand produced calculation based on British Research Establishment guidelines.

Distance the garage would project

31. Mr C has stated that the garage extension would project forward 0.78m from the building line not 1.2m as stated in the planning report. In response to this aspect of his complaint the Council stated that the garage extension would project 1.2m from the main front wall, the distance of 0.78m relates to the projection forward of the brick gable feature on the front of the house. The planning officer concluded that both the projections were acceptable and the Committee agreed. The Council stated that there had been no error in the calculations, simply a difference in the point where the measurements were taken from, which was resolved at the time. They also stated that either way the daylight and shadow issues were the same.

(c) Conclusion

32. The sun light calculations were carried out to a recognised standard. Unfortunately no records of the calculations have been retained. In these

circumstances it is not possible for me to determine whether the calculations were carried out correctly.

33. Whilst I can fully understand Mr C's concerns about access around the property the separation between the two properties is not in itself a planning issue. I am aware that access around a property is not a relevant planning consideration. In addition Mrs C's disability was not raised as a planning objection and furthermore personal circumstances generally cannot be taken into account in reaching decisions on whether to grant planning approval.

34. My investigation has focused on whether the Council, in considering the applications and Mr C's objections, acted properly and applied their normal processes and procedures. In light of the all the evidence I am satisfied that Mr C's objections were properly considered and addressed in the planning report; and that planning permission was granted in line with policy. The objections raised by Mr C were valid in planning terms, which means that they had to be considered by the Council in reaching a decision on the application. However, that does not mean that the Council has to reject the application. I am satisfied that in the planning report considered by the Committee Mr C's objections were properly addressed. I do not uphold the complaint.

35. 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

Mr C	The complainant
The Council	Aberdeen City Council
Councillor 1	The complainants Local Councillor
Councillor 2	Convenor of the Planning Committee
The Committee	The Planning Committee
Mrs C	The complainants wife

List of legislation and policies considered

Local Plan policy R1

Guidelines for the erection of dwelling house extensions forward of the building line

Dwelling extensions in cove: recommended policy