

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200600558: Fife Council

#### Summary of Investigation

##### ***Category***

Local government: Planning; Handling of planning application

##### ***Overview***

The complainants (Mr and Mrs C) raised a number of issues with Fife Council (the Council) concerning the Council's handling of a planning application submitted for the erection of a single storey extension to the rear of the dwelling-house adjoining the complainants' property.

##### ***Specific complaint and conclusion***

The complaint which has been investigated is that the Council in their handling of the planning application failed to consider the effects of the proposed development on Mr and Mrs C's home in relation to privacy (*not upheld*).

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

The Ombudsman has no recommendations to make

## **Main Investigation Report**

### **Introduction**

1. The complaint concerned Fife Council (the Council)'s handling of a planning application submitted for the erection of a single storey extension to the rear of the dwelling-house adjoining the complainants (Mr and Mrs C)'s property. The extension would form an additional bedroom and a sun room.

2. The complaint from Mr and Mrs C which I have investigated is that the Council in their handling of the planning application failed to consider the effects of the proposed development on Mr and Mrs C's home in relation to privacy.

### **Investigation**

3. It is clear from the available information that Mr and Mrs C have strong objections to the proposed extension. While they have received responses from the Council they remain dissatisfied with the Council's overall handling of the planning application. In particular, they maintain that:

- (i) elected members were not advised that a conservatory had already been erected by their neighbour, and that, as a result of the conservatory and the applicant's existing garage, the extension would mean that the total area of developed rear garden ground would be above the recommended 25% in terms the Council's Garden Ground Policy; and
- (ii) the proposal took no account of the condition attached to the planning consent for the erection of the housing development in which Mr and Mrs C's property was situated which required the retention of an eight metre planting strip to the rear of the properties.

4. Mr and Mrs C wrote to the Council detailing their continuing concerns about the handling of the planning application. The Council responded to Mr and Mrs C explaining that, despite their continuing objections, there had been no sound planning reasons to refuse the planning application.

5. My investigation of Mr and Mrs C's complaint has involved reading all relevant documents and correspondence provided by Mr and Mrs C, and making written and telephone enquiries of the Council. I have also examined the relevant planning report and the Council's Garden Ground Policy and House Extension and Garages Policy, and have had sight of photographs of the planning site and of the proposed extension.

6. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the Council were given an opportunity to comment on a draft of this report.

**Complaint: The Council in their handling of the planning application failed to consider the effects of the proposed development on Mr and Mrs C's home in relation to privacy**

7. Mr and Mrs C also raised their concern that the proposed extension would lead to a devaluation of their property. The Council correctly explained to Mr and Mrs C that this was not a relevant planning consideration, and was not considered by the Planning Department when assessing the application.

8. I am satisfied that the Council have, in considering Mr and Mrs C's representations, responded to the issues they have raised. The Council have accepted that not all the representations were responded to timeously, however, they have apologised for this. While I consider it good administrative practice to respond to correspondence timeously, I am satisfied that the Council have fully explained their position through meetings on site, telephone conversations and correspondence.

9. Having considered the relevant planning report I am satisfied that it adequately addressed the issue of privacy. The report explained that the windows of the proposed extension would be located on the northern elevation overlooking the applicant's rear garden. However, the sun room would have a window on the western elevation and while this would face towards Mr and Mrs C's rear garden ground, the window would be mostly hidden by the applicant's conservatory. However, to avoid any possible loss of privacy and increased overlooking, a condition was proposed to require landscaping along the marked boundary.

10. The Council have explained to me that the issue of privacy is a matter of judgement. They accepted that Mr and Mrs C believed that their privacy would be adversely affected by the proposed extension, however, in making a judgement on any planning application the Council as planning authority, have to take into account that a degree of casual overlooking was common between residential properties. In this case, they also had to take into account the presence of the existing conservatory which had been erected under permitted development rights. The conservatory was adjacent to the boundary of Mr and Mrs C's property.

11. Due to the elevated position of the dwelling-house and, as a consequence, the conservatory to that of the rear garden ground, a significant level of overlooking of Mr and Mrs C's garden ground existed from within the conservatory. The Council advised me that to refuse the application the Council would have had to demonstrate that the proposed extension over and above the existing situation (existence of the conservatory) would materially increase overlooking and loss of privacy to an unacceptable degree. In this case, the Council accepted that there would be a minimal increase in the overlooking resulting in a minor increase in the loss of privacy. However, the extent of the increase was not considered to outweigh the presumption in favour of development. The Council's position remained that to have refused the planning application on the grounds of privacy would not have been reasonable. However, as explained above, in an effort to avoid any loss of privacy and increased overlooking a condition was placed on the planning consent requiring landscaping along the boundary.

12. Following the granting of the planning application Mr and Mrs C continued to object to the extension and maintained that the landscaping scheme proposed by the applicant was inadequate. The Council explained to me that they had discussed the applicant's proposed landscaping scheme with an officer in the Physical Regeneration Environmental Project Team. The team provided advice on landscaping matters. As a result of the advice received, the landscaping scheme submitted by the applicant was amended and subsequently approved by the Council. The Council confirmed that they were satisfied that the condition relating to landscaping had been complied with and was, as a result, discharged.

13. With regard to point 3(i) above, having considered the planning report, I am satisfied that it correctly identifies the existing conservatory within the planning site. In addition, the Council advised me that the case officer had visited the site prior to preparing the planning report and would, therefore, have been familiar with the planning site. From the available evidence, I have seen nothing to suggest that elected members were not given full information before arriving at their decision to approve the planning application.

14. The Council accepted that the total area of developed rear garden ground would be 26.5% which was above the recommended 25% but they had not considered this sufficient enough to justify a refusal of the planning application.

The Council explained to me that the 25% garden ground criteria was a planning guideline figure and was not a planning requirement.

15. Turning to point 3(ii) above, the Council, in response to my enquiries, explained that the eight metre planting strip was to the rear of the properties boundaries. They clarified that it was never intended to be within the rear gardens of the properties. As a consequence, it was not relevant in the assessment of Mr and Mrs C's neighbour's planning application for an extension. I understand that a planning brief has been prepared for the land to the rear of Mr and Mrs C's property which is for a large housing site. This brief includes a planting strip along the back of the gardens.

### *Conclusion*

16. I have seen no evidence of failure on the part of the Council in their dealing with the planning application. I am satisfied that the application was processed properly in accordance with the Council's planning policy and procedure, and all relevant planning factors - including the representations received from Mr and Mrs C - were taken into account by the Council before they made the award of planning permission. This discretionary decision, taken without maladministration or service failure, is not open to challenge by the Ombudsman.

17. Clearly Mr and Mrs C remain dissatisfied with the response they have received from the Council. However, I am satisfied that the Council have considered fully Mr and Mrs C's representations and have responded in detail to each of the issues raised by them. The Council have explained properly their position on the matter. I would stress that the minor administrative shortcomings in relation to the handling of correspondence while regrettable, did not impact on the decision-making process relating to the planning application. That Mr and Mrs C disagree with the Council's decision, is not, in itself, a complaint of maladministration or service failure I would pursue. Consequently, I do not uphold Mr and Mrs C's complaint.

19 December 2007

**Explanation of abbreviations used**

Mr and Mrs C

The complainants

The Council

Fife Council