

Scottish Parliament Region: North East Scotland

Case 200602029: Dundee City Council

Summary of Investigation

Category

Local government: Planning; unauthorised alterations to listed building

Overview

The complainant (Miss C), a flat owner in a Category B listed tenement building, raised a number of concerns about the handling by Dundee City Council (the Council) of development proposals concerning an adjacent property.

Specific complaint and conclusion

The complaint which has been investigated is that the Council did not take action to ensure that building works would not harm the integrity of the listed building (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. In 2002, the complainant (Miss C) purchased a flat in a tenement building in a terrace in Dundee which had been given a category B listing in 1965. Miss C's complaint originates from development proposals made in 2004 for the alteration and change of use of adjacent property from offices to form four flats, on which work began in 2006. In the course of the building works, a door from the flats was opened onto the landing below Miss C's flat and unsightly service pipes and boxes were installed on the staircase. Miss C said that these works were undertaken without her consent as a joint owner, ruined the appearance of what had been hitherto an attractive tiled stairwell, and affected the value of her flat.

2. The complaint from Miss C which I have investigated is that Dundee City Council (the Council) did not take action to ensure that building works would not harm the integrity of the listed building.

3. At an earlier stage in our consideration of Miss C's complaint, my colleague informed Miss C on 20 February 2007 that the Ombudsman's office could not overturn the Council's grant of planning permission or stop building works, that we could not look into any complaint about the actions of developers or their agents, and that rights of access and ownership and alleged damage to mutually owned property were legal issues. Disputes about the last matters were more appropriate to pursue in a civil court.

4. While Miss C was also aggrieved about the neighbour notification process carried out in 2004 in respect of applications for planning and listed building consent, in reaching a decision to investigate part of Miss C's complaint, I informed her on 24 August 2007 that the neighbour notification process, which took place over three years previously, was the responsibility of the applicant and their agents. The Council's responsibility was limited to checking the certification that notification of neighbours had been carried out. At such a late point in time when works had commenced a year previously, I saw no obvious benefit to Miss C in investigating how the Council had carried out the checking process into the certification of neighbour notification in 2004.

Investigation

5. The investigation is based on information provided by Miss C and the Council in response to my specific enquiry of them. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Miss C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council did not take action to ensure that building works would not harm the integrity of the listed building

6. In 2002 Miss C, then a student, purchased a second floor flat in a tenement stair at Z Street in Dundee. Miss C's flat is one of eight served by a staircase at number 8. The terrace at 2-10 Z Street was built in 1899 and is in a Conservation Area. It was given a Category B listing in 1965. The flats at 8 Z Street were modernised around 1992. None are on the ground floor or first floor. A number of the flats above Miss C's flat at 8 Z Street are in multiple occupation and are let out. There is a separate tenement stair at 2 Z Street also with eight flats. A shop occupies the ground floor of the building at 4 and 6 Z Street. Formerly the shop/office at ground floor level at 10 Z Street had an internal staircase serving offices at first floor level also having the postal address of 10 Z Street. While there was an existing doorway on the first floor landing at 8 Z Street this had not been used as an access to 10 Z Street, but might have served as an emergency exit.

7. The present complaint originates from events commencing in early 2004 when a change of use of the offices at 10 Z Street was proposed.

8. On 26 January 2004, the Council received a related pair of applications, (Application 1 and Application 2) for planning consent and listed building consent respectively for change of use of the office premises at 10 Z Street to form four flats. These proposals, which proposed a new entrance at first floor level on the first floor landing at 8 Z Street serving proposed flats at 10 Z Street, were the subject of neighbour notification and were validated on 10 February 2004. A letter objecting to the planning application was submitted to the Council on Miss C's behalf by her grandmother. Application 1 and Application 2 were recorded by the Council as having been withdrawn on 15 March 2004.

9. The Council, however, received fresh applications (Application 3 and Application 4) for planning consent and listed building consent respectively from

the same applicant and agents on 28 April 2004, which were validated on receipt. Although the agents certified that neighbours had been notified, Miss C claims that she was not notified either as a neighbour or as a joint owner of the common parts of the building at 8 Z Street. No representations were submitted by her or on her behalf regarding Application 3. Technically, it was not necessary for her to be notified in respect of the application (Application 4) for listed building consent. The planning application (Application 3) was approved on 23 June 2004 with the conditional consent being issued on 1 July 2004. The Council have confirmed that the approved drawings for Application 3 provided for a new access being formed on the first floor landing of 8 Z Street as an access to 10 Z Street but did not indicate a new entrance being formed on the first floor landing of 2 Z Street.

10. The related listed building consent application (Application 4) was withdrawn on 8 July 2004 as a result of a fax from the developer's agent. No reason was given by the agent for the withdrawal and there is no requirement to provide such information. The Council have informed me that at the date of withdrawal of Application 4, Application 3 for planning consent for change of use had already been approved. The works approved in Application 3 did not include works which would affect the character of the building as a building of special or historic interest.

11. With regard to building standards, an application for building warrant (Application 5) to form four flats from office premises was received by the Council on 22 September 2004. Applications for building warrant do not require neighbours to be notified. The original drawings for building warrant were submitted by the same agent who submitted the four previous applications. These drawings were superseded and it is the Council's practice to destroy any superseded drawings. Later amended drawings, submitted on 15 July 2005 following previous comment from Building Control, were submitted by another agent. His drawings of 15 July 2005 indicate a new entrance being formed (in a slightly different location than indicated on the withdrawn Application 1 and Application 2) on the first floor landing of 2 Z Street. The agent annotated on the drawing 'new opening formed subject to LBC (Listed Building Consent) approval'. The building warrant in respect of Application 5 was issued on 2 August 2005. The Council informed me that the building warrant application form (completed accurately by the first agent) asks if the building for which warrant is sought is listed and, if so, what category. The note by the second agent on the approved drawing would, in their view, indicate an awareness on

that agent's part that listed building consent was required as well as a building warrant.

12. The Council informed me that the property at 10 Z Street was sold in April 2006. When workmen installed services in the communal stairwell at 2 and 8 Z Street and inserted a door opening at first floor landing level at 2 Z Street, representations were made to the Council in August 2006.

13. Council officers visited the property and noted that a sprinkler system was in the process of being installed in both communal stairwells and that at 2 Z Street a new entrance was in the process of being formed. When the officers checked the planning files there was no indication of a new doorway within the property known as 2 Z Street nor were there proposals for a sprinkler system in the communal stairwells of 2 and 8 Z Street on the approved drawings for the change of use (Application 3) or the drawings submitted for the listed building application that was subsequently withdrawn in July 2004 (Application 4).

14. On comparing the approved drawings for Application 3 against the approved drawings for building warrant (Application 5) both the planning enforcement officer and the new owner/developer became aware that the two consents were not compatible.

15. A fresh application for listed building consent was sought. This application (Application 6) for permission for installation of services was registered by the Council on 15 November 2006. The installation of services included the formation of a new entrance on first floor level at 2 Z Street, significant pipe work associated with a new sprinkler system, gas pipes and a new electricity box and associated cables.

16. A report on Application 6 was submitted to the Council's Development Quality Committee on 26 February 2007. The Committee agreed with the officer's recommendation to refuse and authorisation was given to the Director of Planning to issue a listed building enforcement notice. Miss C, as a joint owner of the common parts of 8 Z Street, was also served with this enforcement notice on 15 March 2007.

17. The owner of the four flats then being formed at 10 Z Street was served with a separate enforcement notice relating to his formation of a new entrance

at 2 Z Street. The owner, through his agents, submitted related appeals against the refusal of listed building consent and the two enforcement notices. These appeals were considered by the Directorate for Planning and Environmental Appeals and the decision letter was issued on 14 August 2007. Their decision was to partly allow the appeal against the refusal of listed building consent, to dismiss the appeals against the listed building enforcement notices, but to vary the terms of those notices.

18. In response to my enquiry, the Council's Chief Executive informed me that at the time Application 5 was under consideration, Building Standards would not, as a matter of internal procedure, have alerted Development Control to proposed building works which might have had a bearing on the integrity of the listed building. It would have been open to Building Standards officers to advise applicants that they should consult with planning officers and vice versa. The onus fell on the applicant to ensure that they had the necessary consents. The Chief Executive informed me that the Council's Planning and Transportation Department had now put in place a procedure whereby planning enforcement officers are given a weekly print out of all new applications for building warrant submitted to the Council for them to ascertain whether planning consent or listed building consent is required.

Conclusion

19. The evidence before me suggests that Miss C's problems originate entirely from the actions of the owners of the property at 10 Z Street and their agents and not from maladministration or service failure by the Council. The new owner of the property, before instructing workmen to commence the change of use from office to flats and to install associated services, should have checked that the two permissions he inherited for planning consent (Application 3) and building warrant (application 5) were compatible and should also have ascertained whether a further application for listed building consent was needed. I consider that the Council took the appropriate action after they were alerted in August 2006 about works which had not been authorised by them. I make no comment on any alleged defects in notification of neighbours or consultation with other owners by the previous or present owner of the property at 10 Z Street. A grievance that the present owner of the proposed flats acted outside of his legal entitlement in using an existing doorway at first landing level as an entrance and in creating a second doorway is a civil matter on which Miss C should take legal advice. I do not uphold the complaint that I have investigated.

20. I am pleased to note the procedural change instituted by the Council, which is set out at paragraph 18.

Recommendation

21. The Ombudsman has no recommendation to make.

19 December 2007

Explanation of abbreviations used

Miss C	The complainant
The Council	Dundee City Council
Z Street	The building at Z Street built in 1899 and granted list B consent in 1965 comprising 2 stairs with eight flats at 2 and 8 Z Street, a shop at 4 and 6 Z Street at ground floor level and former first floor offices at 10 Z Street
Application 1	The original application for planning consent for change of use submitted on 26 January 2004 and withdrawn on 15 March 2004
Application 2	The original application for listed building consent submitted on 26 January 2004 and withdrawn on 15 March 2004
Application 3	The second application for planning consent for change of use submitted on 28 April 2004 approved on 23 June 2004 and for which consent was issued on 1 July 2004
Application 4	The second application for listed building consent submitted on 28 April 2004 and withdrawn on 8 July 2004

Application 5

Application for building warrant for change of use submitted on 22 September 2004 and approved on 2 August 2005

Application 6

The third application for listed building consent registered on 15 November 2006 and refused by the Council on 26 February 2007