

Scottish Parliament Region: Highlands and Islands

Case 200700996: Orkney Islands Council

Summary of Investigation

Category

Local government: Planning, handling of application (complaints by opponents)

Overview

The complainant (Ms C) raised a number of concerns about the way in which the Council handled a planning application for change of use consent for a property close to her own.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to follow proper procedures and law, in that the application for change of use was considered before the expiry date for representations (*not upheld*);
- (b) ignored Ms C's material representations (*not upheld*); and
- (c) failed to submit the application back to Committee although material representations were received in advance of the expiry date, thus depriving Councillors of all the relevant facts (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 14 August 2007, Ms C submitted a complaint to the Ombudsman about the way in which Orkney Islands Council (the Council) dealt with a planning application for change of use to a café for premises in the same street as her property. She alleged that, in considering the application, the Council failed to follow proper procedure and law and Councillors were misled by not being given the opportunity to view all the relevant facts before reaching their decision. Ms C was unhappy that, despite a close vote (5:6), the application was not put back to Committee although new representation was received prior to the expiry date for representations.

2. The complaints from Ms C which I have investigated are that the Council:
- (a) failed to follow proper procedures and law, in that the application for change of use was considered before the expiry date for representations;
 - (b) ignored Ms C's material representations; and
 - (c) failed to submit the application back to Committee although material representations were received in advance of the expiry date, thus depriving Councillors of all the relevant facts.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Ms C and the Council. I have also had sight of a report (the Report) by the Director of Development Services which was presented to the Environment, Planning and Protective Services Committee (the Committee) on 4 July 2007. On 7 September 2007 I made a formal enquiry of the Council and the Chief Executive replied to me on 8 October 2007.

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

(a) The Council failed to follow proper procedures and law, in that the application for change of use was considered before the expiry date for representations

5. On 16 and 28 June 2007, Ms C made written objections to a planning application to change the use of a loft store to a café. The development site

was within a conservation area. The application, the Report and her objections were considered by the Committee on 4 July 2007 and Ms C's oral representations were also heard. However, the Committee went on to approve the application 'subject to there being no additional material representations that have not already been considered by the Council in the outstanding period for representations, conditional consent should be issued in respect of the proposed change of use from a store to a café'. Ms C said that the 'outstanding period' referred to was the period up until 27 July 2007, that is, the expiry date for representations on the planning application and she was aggrieved that the Council considered the planning application before the time limit for representations had expired.

6. In providing their formal comments to my enquiries (see paragraph 3), the Chief Executive said that, in terms of the Council's Scheme of Delegation, the Director of Development Services had delegated powers to approve non-contentious planning applications which fell within Council policy. Others would go to the Committee. While in this case, the Chief Executive said, the application for change of use was in accordance with the Council's development plan, it had been decided that, because two objections had been received, the application would go to the Committee on 4 July 2007.

7. The Chief Executive went on to say that the application was for a change of use, involving very few exterior alterations, in an area where other food retail outlets were located but it was, nevertheless, decided, 'for the avoidance of doubt', to advertise the proposal under section 65 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the Act). A notice in the local press invited comments by 4 July 2007 and, because there had initially been an error in displaying a site notice on the premises concerned, the period for objections was extended to 27 July 2007.

8. I have been advised that meetings of the Committee had been scheduled to take place on 4 July and 10 September 2007 and it was considered that to delay consideration of the application until September would have been unreasonable to the applicant (because in terms of planning legislation, if an application is not determined within two months from submission, the applicant has a right to appeal against a deemed refusal) when it would have been possible to obtain the Committee's views on 4 July 2007. The Committee, therefore, considered the application and made a decision on it which was

subject to a condition (see paragraph 5). However, planning permission was not issued until 2 August 2007.

9. In commenting specifically on this aspect of the complaint, the Chief Executive said that it was the Council's view that the processing of the application was undertaken in 'a manner that ensured that the procedural rights of the public were safeguarded and held in proper balance with the right of the applicant to expect timeous determination of the application'.

(a) Conclusion

10. While it is clear that the Committee took a view on the planning application before the expiry date for representations (before 27 July 2007), the Chief Executive has explained the reasons for doing so (see paragraphs 8 and 9) and I accept these. Thereafter, the decision was subject to a caveat (see paragraph 5) and was not formalised or confirmed to the applicant until after the expiry time for representations. It was not finalised until then as an opportunity remained open for the Council to amend or change their view in the event of new material representations being made before 27 July 2007. Accordingly, I am not of the view that the Council failed to follow proper procedures. Ms C contends that the Council did not follow the law and this is for the Courts to decide but, given the circumstances applying to this application, I do not consider the Council's actions unreasonable, and I do not uphold the complaint.

(b) The Council ignored Ms C's material representations

11. Ms C said that prior to 4 July 2007 she had lodged her objections to the application for change of use, however, she feels that these were not properly represented and that her views were disregarded by the Committee.

12. I have had sight of Ms C's original letter of objection and I have seen the Report submitted to the Committee. This showed that two letters of representation were received, one of these from Ms C. The Report summarised the main points of the representations (including those from Ms C) and went on to address them. I am aware that Ms C was also given, and took, the opportunity to address the Committee.

(b) Conclusion

13. Ms C does not consider that the Report adequately represented her objections but I have not seen evidence to support this. As she also availed herself of the opportunity to speak to the Committee, I am satisfied that they

were fully cognisant of her strong feelings in the matter but, nevertheless, they reached a decision, subject to a caveat about further representations (see paragraph 5). Therefore, while there is disagreement between Ms C's and the Committee's assessment of the situation, this is not in itself illustrative of maladministration or service failure. Accordingly, I do not uphold this aspect of the complaint.

(c) The Council failed to submit the application back to Committee although material representations were received in advance of the expiry date, thus depriving Councillors of all the relevant facts

14. The Chief Executive said that to comply with the terms of section 65 of the Act, (that the application should not be determined before stated periods of notice had expired) the Committee instructed that any determination to approve the application must be subject to there being no additional material representations being made within the intervening period. Representations were made up until the expiry date and these were considered. However, the Council took the view that none were concerning material matters which had not been the subject of previous representations (that is, they were not new) and, hence, the application did not revert back to Committee. This was notwithstanding the fact that the decision taken on 4 July 2007 had been a close one. Those representations which were received after the Committee meeting of 4 July 2007, and before the expiry date for representations (27 July 2007), were assessed but the decision was taken by the Director of Development Services (under the Council's scheme for delegation) that, as no issue had been raised which had not already been considered by the Committee, planning permission be granted. A letter confirming this was issued on 2 August 2007.

(c) Conclusion

15. The Committee had undertaken to look again at their decision should any new material objections be received before the expiry date for objections but the view on those representations was that they had been raised before. While Ms C may dispute the Council's assessment of what was material or not, this is for the planning authority to determine and any dispute on this score ultimately has to be tested in the courts. I have not seen evidence to suggest that the Council acted improperly in deciding this matter and I do not uphold the complaint.

Explanation of abbreviations used

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| Ms C | The complainant |
| The Council | Orkney Islands Council |
| The Report | A report by the Director of Development Services , presented to the Committee |
| The Committee | The Environment, Planning and Protective Services Committee |
| The Act | The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 |