

## Scottish Parliament Region: Highlands and islands

### Case 200500617: The Highland Council

#### Summary of Investigation

##### **Category**

Local government: Planning: enforcement of planning conditions

##### **Overview**

The complainant (Mr C) and his wife run a holiday cottage business in an island village in the area of the Highland Council (the Council). Mr C claimed that the level of parking in adjacent premises used as a guesthouse and as a restaurant had led to access problems for him and his clients and that the Council had not ensured an appropriate level of parking provision for the adjacent premises.

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

The complaint which has been investigated is that the Council failed over a number of years to ensure that the proprietors of the adjacent premises provided adequate car parking (*partially upheld*).

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

The Ombudsman has no recommendation to make.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) and his wife reside in a village on an island in the area of the Highland Council (the Council). In the past decade, they have developed a number of detached cottages for holiday let. Adjacent premises were acquired by the present owner (Mr B) and his business partners around 1997, and in 2000 he made applications to the Council for planning consent (Planning Application 1) and building warrant for extension of the premises. Mr C considered that the level of parking provided by Mr B has been inadequate and that Mr C and his wife and their clients have suffered difficulties of access from Mr B's clients' cars parking on the narrow public road and at the entrance to Mr C's property.

2. The complaint from Mr C which I have investigated is that the Council failed over a number of years to ensure that the proprietors of the adjacent premises provided adequate car parking.

3. Mr C first complained to the Ombudsman's office in 2003. At that time, Mr B was actively pursuing a second planning application (Planning Application 2) for a further extension of his premises. After being granted planning consent on 9 February 2004, Mr B subsequently informed the Council in late 2005 that he did not intend to implement it. The Council decided that the level of parking which should be provided should relate to Planning Application 1, consent for which was granted on 27 November 2000. Mr C had been concerned that the Council had not acted even-handedly with regard to his own development proposals compared to those of Mr B. He also alleged that a local councillor failed to declare an interest at a meeting of the Council's Area Committee. I informed Mr C that I would not investigate the Council's decisions in respect of his own development proposals since he had a right of appeal to Scottish Ministers. Further, in respect of the local councillor's alleged failure to declare an interest, Mr C could have complained to the Commission for Standards in Public Life. I informed Mr C by letter of 2 July 2007 that my investigation would focus primarily on the issue of car parking provision.

### **Investigation**

4. The investigation is based on information supplied by Mr C and the Council. 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.

5. Mr C and his wife have a business in a village on an island in the Council's area letting holiday cottages, for which they were granted conditional planning consent on 17 September 1999 and 28 May 2002. The adjacent premises were acquired by Mr B and his wife in 1997, and were first the subject of applications for planning consent and building warrant for extension in 2000. The adjacent premises currently run as a guesthouse and restaurant.

**Complaint: The Council failed over a number of years to ensure that the proprietors of the adjacent premises provided adequate car parking**

6. Mr B submitted Planning Application 1 in 2000 for planning consent for the extension of his guesthouse and restaurant. This was granted conditional consent on 27 November 2000. Planning Application 1 allowed for two letting bedrooms and 18 covers in the restaurant. A related building warrant, however, allowed for three letting bedrooms. Plans approved with Planning Application 1 indicated a total of 11 car parking spaces would be provided.

7. Mr C first wrote to the Ombudsman after Mr B submitted Planning Application 2 to the Council in July 2003 for planning consent to erect an extension to his premises. A site visit was paid by members of the Area Committee on 29 September 2003. Following Mr C's objections about the level of proposed car parking provision, consideration of Planning Application 2 was twice thereafter continued by the Area Committee. Eventually, a condition was included requiring car parking for 15 cars and for the access to be constructed to base course level prior to construction commencing on the extension. Planning Application 2 was approved by the Area Committee on 2 February 2004 and the planning consent was issued to Mr B on 9 February 2004. In terms of the consent for Planning Application 2, a maximum of five letting bedrooms was permitted.

8. Mr C wrote again to the Ombudsman's office on 29 December 2004 supplying recent correspondence he had had with the Building Control and Planning Services about the number of letting bedrooms permitted and in use in Mr B's premises. He was informed of the necessity to pursue his grievance through the Council's complaints procedures.

9. While Mr B commenced preparatory work in excavating land at the rear of his property, and made alterations to the car park around March 2005, the Council subsequently took the view that Planning Application 2 had not lawfully been implemented.

10. Following further correspondence from Mr C, a new complaint file was opened on 1 June 2005. By that time, Mr C had very recently submitted an application for relaxation of the occupancy conditions attaching to his cottages. In responding to Mr C by letter of 31 August 2005, I identified five issues raised by Mr C namely: (a) alleged bias shown towards Mr C's own development proposals; (b) the number of letting bedrooms in Mr B's premises; (c) the number of covers in the restaurant at the Hotel; (d) existing and future car parking provision; and (e) the alleged failure of a member of the Area Committee to declare an interest at an Area Committee meeting on 2 February 2004. I informed Mr C in respect of (a) that, were his then current application to be refused, he could appeal to Scottish Ministers. (However, members of the Area Committee subsequently overruled a recommendation by officers, and decided to remove occupancy conditions relating to Mr C's cottages). With reference to (b) while the conditional consent granted on 27 November 2000 in respect of Planning Application 1 limited to two the number of letting bedrooms, the conditional consent in respect of Planning Application 2 granted on 9 February 2004 for a further extension of the Hotel limited the total letting bedrooms after construction to five.

11. With reference to (c) I suggested that the parking problems giving Mr C concern were probably more a consequence of the number of covers at the restaurant than the number of letting bedrooms. The consent issued in respect of Planning Application 1 for the earlier extension to the guesthouse and restaurant increased the size of an existing coffee shop to cater for 18 covers. The Council's Director of Planning and Development in a letter of 12 May 2005 to Mr C stated that Mr B had said he had 24 covers but that, on occasion, he catered for 48 diners. This was achieved by using the coffee shop and a downstairs room (formerly a lounge area for guests) as a restaurant. This was a matter that Mr C required to pursue with the Council.

12. With reference to (d), Mr C maintained that the condition in the consent for Planning Application 2 that 15 car parking spaces be provided could not be accommodated were the proposed extension to be built. The consent had not, however, been implemented. I observed that any current obstruction of the

highway through overspill parking was a matter for Mr C to report to the police. In respect of (e), I referred Mr C to the Commission for Standards in Public Life on the issue of the particular local councillor's alleged failure to declare an interest. I invited Mr C's comments before considering the matter further.

13. Mr C thereafter engaged in further correspondence with the Planning and Building Standards Services at the Council. In a letter of 21 November 2005 Mr C informed me that he had learned from the Council's local office that Mr B had 'officially withdrawn' from implementing the proposals in Planning Application 2. Mr C wrote in November 2005 to the Area Planning Officer (Officer 1) and Senior Building Standards Officer (Officer 2) about unauthorised internal alterations, the number of authorised letting bedrooms, the use of the guest lounge area as part of the restaurant, and the level of car parking provision.

14. Examination of the correspondence indicates that, notwithstanding Mr B's decision not to implement the consent for Planning Application 2, Officer 1 was keen to see improvements effected to the car park area. He emailed Mr B on 8 January and 31 January 2006 in this connection. Mr B's initial reaction was to deny a problem existed and to maintain that existing car parking arrangements had, to date, proved perfectly adequate. On 9 March 2006, Officer 1 sent an email to Mr B recognising that with regard to the lesser need (entailed in the Planning Application 1 consent still controlling the development), provision of a gravel surface with acceptable demarcated spaces might be acceptable rather than extending the car park with a tarred surface as was envisaged in the consent for Planning Application 2. Officer 1 observed that lack of demarcation and careless parking were, in his view, the cause of parking overflow which had been observed. On 16 March 2006 Officer 1 and Officer 2 paid a joint visit to Mr B's premises. Officer 1 indicated to Mr B that the site should be landscaped, the spaces demarcated, and the access completed. Mr B undertook to submit a scheme to Officer 1. In an email to a member of the Area Committee, Officer 1 conceded that his demands of Mr B went beyond the 2000 permission, but would nevertheless prove beneficial.

15. Shortly after supplying me with relevant correspondence on the car parking issue on 18 March 2006, Mr C submitted a letter of complaint to then Chief Executive on 28 March 2006 enclosing copies of recent correspondence but without detailing specific grievances. Mr C, however, asked that the

consent for Planning Application 2 be revoked. While Mr C awaited a reply, he continued to correspond with the Planning and Development Service.

16. Meanwhile, on 24 April 2006, the Area Committee decided, contrary to the recommendation of officers, to grant consent to Mr C for a further holiday cottage. Mr B also placed the Hotel on the market for sale. The particulars stated that there were currently two letting bedrooms and restaurant with seating for 24 diners.

17. The then Chief Executive's response of 10 May 2006 to Mr C's letter of 28 March 2006 was not detailed. He stated that he considered responses previously sent to Mr C had been appropriate and that there was no reason to revoke the consent for Planning Application 2. Ongoing attempts were being made to review the level of parking provision. The Chief Executive's letter did not refer to the Council's complaints procedures having been exhausted or that Mr C could have recourse to the Ombudsman's office.

18. A check with the Council on 26 May 2006 established that they did not consider that their complaints procedures had been completed. Mr C supplied me on 10 June 2006 with a further letter from the then Chief Executive of 2 June 2006, which Mr C found evasive. He asked that the Ombudsman investigate.

19. On 12 July 2006, Mr C informed me that he had had a letter of 4 July 2006 from the Director of Planning advising him that the newly appointed Head of Planning and Building Services (Officer 3) had reviewed extant planning consents and the planning situation at the adjacent premises. The letter referred to the possibility of a Planning Contravention Notice (PCN) being served on the owners of the adjacent premises with regard to parking provision. Mr C informed me that he saw Officer 3's involvement as positive and that the parking situation had recently improved.

20. Mr C wrote again on 12 July 2006 to Officer 3. In his reply of 6 September 2006, Officer 3 explained that whereas no PCN had by then been issued, the Council's Roads team were to draw up an amended specification for car parking provision to be put to Mr B to accept, with a time scale for implementation. Officer 3 undertook to write to Mr C again in respect of the car park provision. While Mr C indicated that he would be happy with 15 spaces (paragraph 7), Officer 3 responded to Mr C on 10 October 2006 stating that the

number of car parking spaces the Council could strictly enforce was 11 but that it was the Council's intention, with the technical advice of the Roads team, to maximise this. This information was forwarded to me on 10 November 2006.

21. Following subsequent requests for an update, Mr C informed me on 6 February 2007 that he had spoken with Officer 3 again on 12 January 2007 followed by a letter of 15 January 2007 in which Officer 3 stated that he intended to take enforcement action to secure provision of 11 car parking spaces in relation to the consent for Planning Application 1. At that time, there had been no recent change in the car parking provision.

22. I established in February 2007 from the Council that Officer 3 remained hopeful of negotiating a settlement with Mr B without recourse to formal enforcement action. Officer 3 awaited advice from a Council solicitor then engaged in a major Public Planning Inquiry. The advice was not given to Officer 3 until 25 May 2007.

23. In the meantime, Mr B in early May 2007 took action to lay out the spaces in the car park with logs and green rope and marked out one bay for disabled persons. Mr B also took over the occupation of the house next door and this gave him an additional four car parking spaces at his disposal.

24. Having considered the solicitor's advice, Officer 3 wrote to Mr C on 26 July 2007 with an apology for the delay. He informed him that the Council's local roads team would inspect Mr B's recent works but that Officer 3 did not intend to take further the matter of enforcement.

25. In commenting on 17 November 2007 on my draft report, Mr C repeated his view that the parking provided in compliance with Application 1 did not cater for the increased number of covers in the restaurant. He accepted that current parking problems had been largely resolved through Mr B having the house next door at his disposal. Mr B feared that if those premises ceased to be available to Mr B, then problems with overspill car parking might return.

### *Conclusion*

26. It is clear that after obtaining planning consent for Planning Application 1, Mr B made internal alterations and changed the use of rooms to have at times one more letting room than the two allowed in that consent. The extra letting bedroom would, however, only have generated one extra car being parked

overnight. More significant, for the investigation, is the number of diners the restaurant caters for. It would seem that Mr B can cater for more diners than envisaged in November 2000.

27. For the period from July 2003 to November 2005 the issue was clouded by the fact that to implement his proposals to extend to the rear of his premises, Mr B would require first to lay out to base core level parking for 15 vehicles rather than the 11 contained in the approved drawings for Planning Application 1. With the intimation in late 2005 that he did not intend to implement Planning Application 2, the Council's Planning Services has been able to concentrate on securing compliance with the earlier consent for Planning Application 1. It is unfortunate that it has taken until comparatively recently for Mr B to follow-up the commonsense suggestions of Officer 1 in January 2006 with a view to better utilising the area in front of his premises to accommodate the requisite number of vehicles without overspill.

28. Mr C and Mr B live in a remote area and their businesses are not in competition. While, at an earlier stage, Mr C felt he was being discriminated against, the removal of occupancy conditions on his cottages and the grant of consent for a further cottage, has redressed the balance.

29. Unless the internal changes leading to more dining covers are considered to involve a material intensification of use, the parking provision approved in respect of Planning Application 1 sets the limit of what the Council can enforce.

30. I can understand why, when further extension had been approved, the Council were reluctant to enforce when implementation of the new proposals would have required more parking. It took Mr B fully 18 months from announcing his intention not to implement Planning Application 2 and over a year after receiving advice from Officer 1 to introduce measures to secure more orderly parking. I believe the Council could have been more forceful with Mr B. In that time Mr C was probably inconvenienced by overflow. I, therefore, partially uphold Mr C's complaint.

#### *Recommendation*

31. The Ombudsman has no recommendation to make.



**Explanation of abbreviations used**

Mr C	The complainant, who with his wife, runs a business letting holiday cottages
The Council	The Highland Council
Mr B	The joint owner of a guesthouse and restaurant adjacent to Mr C's property
Planning Application 1	An application for planning permission submitted by Mr B in 2000 for which consent was issued on 27 November 2000 and required 11 car parking spaces to be provided
Planning Application 2	Another application for planning submitted by Mr B in 2003 for which consent was issued on 9 February 2004 which required 15 car parking spaces to be provided
Officer 1	Area Planning Officer
Officer 2	Senior Building Standards Officer
Officer 3	Head of Planning and Building Services
PCN	Planning Contravention Notice