

## Scottish Parliament Region: West of Scotland

### Case 200502961: West Dunbartonshire Council

#### Summary of Investigation

##### **Category**

Local government: Planning; Handling of planning application (complaint by opponent)

##### **Overview**

The complainant (Mr C) raised a number of concerns about the handling by West Dunbartonshire Council (the Council) of an application (the Application) for planning consent for housing on a nearby site, the proposed access to which is immediately to the side of Mr C's home.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that the Council:

- (a) mishandled Mr C's representations on the Application (*upheld*);
- (b) prepared a report on the Application prior to the expiry of the period for representations (*upheld*);
- (c) failed to meet Mr C's requests for information on their report and the minutes relating to the consideration of the Application (*upheld*);
- (d) officers took an over-active interest in promoting the applicant's interests particularly regarding access (*not upheld*); and
- (e) planning officers inappropriately issued the outline consent without further reference to the Council's Planning Committee (*not upheld*).

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

The Ombudsman recommends that the Council review their procedures:

- (i) in order to ensure that in similar future circumstances objectors have confidence that their timely representations are fully considered and reported on; and
- (ii) on issuing reports for consideration where the period for representations has not expired.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) lives on a busy main road (X Road). To the rear of his home is the site of a disused former convent with extensive grounds (the Site). In 2001, several related planning applications were made to West Dunbartonshire Council (the Council), including one (the Application) for outline planning consent for the demolition of the convent, the erection of residential development on the Site and the provision of a new road through the Site connecting X Road with another road (Y Road). Mr C made representations on two occasions on the Application in 2002 and 2004. Conditional outline planning consent for the Application was issued on 6 February 2006.

2. The complaints from Mr C which I have investigated are that the Council:

- (a) mishandled Mr C's representations on the Application;
- (b) prepared a report on the Application prior to the expiry of the period for representations;
- (c) failed to meet Mr C's requests for information on their report and the minutes relating to the consideration of the Application;
- (d) officers took an over-active interest in promoting the applicant's interests particularly regarding access; and
- (e) planning officers inappropriately issued the outline consent without further reference to the Council's Planning Committee.

3. Mr C had made a total of 19 allegations in a letter of complaint to the Council's former Chief Executive of 24 October 2005. I considered that 15 of these could be incorporated into the five points above. In a letter of 22 March 2007, I informed Mr C that I would not investigate his grievances about a statement issued by the applicant's agents; Mr C's concerns that the Council had allowed the fabric of the listed convent buildings to deteriorate; or that the access road arrangement was inappropriate given an existing tree preservation order.

### **Investigation**

4. The investigation is based on information supplied by Mr C and the Council's response to my enquiries. 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's home in X Road lies to the north of the Site, which extends to 3.3 hectares. The Site contained a disused chapel and derelict convent building both of which were category B listed buildings. A former primary school was located on part of the Site but it was demolished in 1999. The derelict former convent building was demolished after August 2004.

6. The Site had a complex planning history. In 1974, Dumbarton Burgh refused outline planning permission for residential development on the former school playing fields extending to 3.1 hectares, but the decision to refuse was overturned on appeal. The approval was renewed by a subsequent permission granted by the Council. That permission lapsed prior to 2001. Access to the Site would have been taken from X Road. A further application for outline permission for residential development taking access via a third road (Z Road) was refused. In that application the chapel and part of the convent would have been retained for conversion into flats. Another application made in 1997 for outline planning permission for residential development (also on the same site as the Application) with an access from X Road was refused. The Council, however, granted full planning permission to an application submitted in 1998 to convert part of the convent into 24 flats with the chapel retained as a community building. The remainder of the convent would have been demolished if that application had been implemented.

7. In 2001, the Application and three related applications for planning and listed building consent were submitted to the Council. The Application (and a related listed building consent application) proposed demolition of the existing convent building and sought outline permission for the erection of residential development on the Site and for the provision of a new road from X Road to Y Road. Another pair of applications were for full planning permission and listed building consent respectively, for the conversion of the chapel into six dwellings.

8. The Application was registered on 19 March 2002. Mr C and others received neighbour notification at that time. Mr C submitted representations in a letter of 27 March 2002 on both the application for the conversion of the chapel of the former convent into six dwellings and on the Application. The Council's letter of acknowledgement of 4 April 2002 bore the single reference number and single title of the application relating to the conversion of the chapel. The Council said that Mr C's letter was treated by them as relating to

both the Application and to the application for planning consent for conversion of the chapel.

9. The Council informed me that prolonged discussions on the Application took place between the applicant's agents (the Agents) and the Council's Roads and Planning Services. In April 2004 an indicative plan showing a single main access onto X Road, with a new signal controlled junction adjacent to Mr C's home was submitted. Roads officers confirmed to planning officers that this indicative plan was sufficient to demonstrate that an acceptable junction could be provided. Planning Services considered it necessary that neighbours be re-notified and that the Application be re-advertised.

10. A letter and neighbour notifications were prepared on 5 and 6 May 2004 by the Agents explaining the change in the access arrangements to a proposed simple traffic signalled junction arrangement at X Road which the Agents said had been 'agreed in principle by the Council'.

11. The Application was advertised in a local newspaper on 14 May 2004 with a period for making representation ending on 28 May 2004. A report was prepared on 7 May 2004 for the Council's Planning Committee (the Committee) on 2 June 2004 recommending that authority to grant outline planning permission be delegated to officers, subject to conditions and the completion of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Section 75 Agreement). The report listed in the background papers the representations received in March and April 2002 (paragraph 8).

12. On 26 May 2004, Mr C submitted two letters to the Council. In the first, Mr C made representations in respect of the revised Application proposals. He pointed out that the house at X Road, of which he and his wife were owners, shares a common boundary with the proposed amended access to the Site. Mr C stated that while the Application was apparently an application in outline, the Agents had stated in their letter of 6 May 2004 to residents that the Council already accepted the proposed junction in principle. He considered that this had prejudged the issue and could have put off possible objectors. He stated that the proposals would require felling of trees protected by a tree preservation order. He was aggrieved that the applicant had not consulted with his wife and himself as the residents most affected. If implemented, and traffic signals controlled the proposed junction, he and his wife would be denied the right to park their car outside their home and would be prevented from the possibility of

constructing a driveway with off-street parking, a facility enjoyed by most of their neighbours. Mr C objected, therefore, to the grant of outline consent. He stated that in his previous representations in 2002 he had not objected to the development of the Site in principle, so long as the proposals included safe and appropriate access arrangements. Mr C concluded his letter by stating that elements of the Application and the procedure to determine it might well infringe his human rights, particularly his rights under Article 1 Protocol 1 and Article 6 relating to the protection of his right to peaceful enjoyment of his property and his fundamental right to a fair hearing. In a separate letter of 26 May 2004, Mr C requested a copy of the final report on the Application which was to be submitted to the Committee. Mr C's letters were received by the Council on 27 May 2004.

13. The relevant minutes of the Committee meeting of 2 June 2004 record that the Committee, after discussion, and having heard the Planning and Development Manager in further explanation, agreed to grant planning permission subject to conditions for the conversion of the chapel into six residential units. After discussion, and having heard the Planning and Development Manager in further explanation, the Committee, following a division, decided by four votes to three votes to continue the application to demolish the former convent and link wing (listed building consent) in order to enable a site visit to be undertaken. In respect of the application for the refurbishment of the chapel (listed building consent), after discussion, and having heard the Planning and Development Manager in further explanation, the Committee decided to grant conditional listed building consent. With reference to the Application, the Committee, after discussion, and having heard the Planning and Development Manager in further explanation, continued the Application in order to enable a site visit to be undertaken.

14. A site visit was thereafter made and the Application and the other outstanding application for listed building consent were considered further by the Committee at its meeting on 4 August 2004. After discussion, and having heard the Planning and Development Manager in further explanation, the Committee agreed to grant conditional listed building consent for the demolition of the former convent and link wing.

15. With regard to the Application, the minute of the 4 August 2004 Committee meeting records that reference was made to the site visit undertaken. Having heard the Planning and Development Manager in further explanation, and in

answer to Committee members' questions, the Committee agreed that they were minded to grant outline planning permission, subject firstly to the recording of a Section 75 Agreement to ensure that the conversion of the chapel occurred concurrently with the housing development, and to ensure that the applicant provided appropriate access to the rear of certain properties affected by the new development; and secondly to the conditions specified in the report of the Director of Development and Environmental Services (the Director) of 7 May 2004.

16. Conditions 2-4 of the proposed outline consent for the Application required full details of the proposed vehicular access with X Road from the Site to be included in a subsequent application for approval of reserved matters, specified a maximum number of units which might be accessed from Y Road, and required that the approved vehicular access with a traffic signal controlled junction should be installed to the satisfaction of the Director prior to the construction of any dwelling unit on the Site. The related listed building consent application required notification of the proposal to demolish the convent buildings to the Royal Commission for the Ancient and Historical Monuments of Scotland.

17. While Mr C, in light of his earlier objection (paragraph 8), was informed on 24 June 2004 of the decision of the Committee taken on 2 June 2004 to approve one of the other applications, he was not notified of the decision taken on 4 August 2004 in respect of the Application since issue of the outline planning consent awaited completion of the Section 75 Agreement.

18. On 3 June 2005, a planning officer (Officer 1) wrote to Mr C and his immediate neighbours at X Road explaining that planning consent had not yet been issued pending completion of the legal agreement. Officer 1 said that he understood that residents were concerned about the access onto X Road, and the possibility of a lane or access track being provided along the rear of adjacent houses. Officer 1 set out the current proposals, which were for the Site to be accessed from X Road adjoining Mr C's property, with traffic signals installed to control this new junction. This would inevitably result in traffic queuing on X Road outside existing homes, and parking restrictions would have to be imposed in the immediate vicinity of the junction. The Council considered that the impact upon the existing houses would be acceptable, but in order to offset the likely loss of on-street parking spaces next to the junction, the applicant had, as a gesture of goodwill, offered to provide a lane at the rear of

Mr C's and his immediate neighbours' properties, from which the householders affected could form driveways into their rear gardens should they so wish. Officer 1 understood that opinion on the merits of such a lane was divided, with some residents keen to have such a lane, and others opposed to it on the grounds of security. While the Site had been derelict, it had attracted a degree of anti-social behaviour. Officer 1 ventured that, once the Site was developed as a residential estate, it would cease to be an attraction for vandals and other anti-social individuals. Officer 1 stated that the Council would require the developer to provide a connection from the Site to an existing lane to the rear of other properties in X Road to the east. While the position of this connection had not been agreed, it might be that such a path would be provided immediately to the rear of the houses of Mr C and his neighbours irrespective of whether or not they decided they would like a vehicular access at this point. Refusing to accept a vehicular access lane would not necessarily prevent a footpath being formed, but might merely serve to reduce the width of that path. Officer 1 suggested that if a rear access was to be provided, the residents might wish to take the opportunity to have it constructed to a standard to provide vehicular access if desired. The position of the footpath had not been agreed at that time.

19. On 8 June 2005, the Agents wrote to Mr C and five other householders concerned inviting them to meetings on a one to one basis at X Road to gauge individual and collective concerns. Only a single meeting involving the six affected householders and the Agents was held. At that meeting, five of the six householders expressed opposition to the creation of any vehicular access or path at the rear of their homes. As a result of that opposition, the Agents requested that the Council delete the requirement that a right of access be created. Mr C informed me that he telephoned the Agents the day following the meeting to confirm that he wished to have rear access but that this did not require the creation of a through road.

20. On 2 August 2005, Officer 1 wrote to Mr C and the other householders. He pointed out that four of the five householders had existing driveways at the front and one additionally had a garage, which is accessed via a corner of the Site and an existing lane further to the east. The introduction of parking restrictions adjacent to the new junction would have less of an impact on these properties. Officer 1 recognised that the parking restrictions would be more inconvenient to Mr C and to one other property, and it was to address this that the question of rear access had first been suggested. Officer 1 considered it possible to provide rear or side access without forming a through access lane

along the entire row of six houses. It was also possible that the other house might not be affected by parking restrictions but this was dependent on the design of the new junction. Officer 1 indicated that he intended, therefore, to delete the requirement that a right of access be provided, but to suggest to a future developer that when the Site was developed the layout should allow for the future creation of rear driveways into the property of Mr C and the other owner (if desired). Officer 1 stated that this provision was not, however, a planning matter but was 'reliant upon the goodwill of the site owner'. Officer 1 pointed out that the Council would be imposing a condition requiring the provision of a pedestrian access through the Site connecting with an existing lane to the east. Officer 1 noted the opposition of the six householders to the lane being located behind their houses. Officer 1 advised Mr C that he would have the opportunity to comment on the detailed layout proposals when an application was made for approval of reserved matters.

21. On 7 August 2005, Mr C submitted a formal complaint to the Director. He briefly outlined the history of the Site and problems with access and stated that the solution of traffic lights had been devised by the Council rather than the applicant, and that these were inappropriate and would generate even worse peak hour congestion than that occurring at present. There would now be five sets of traffic lights in a short stretch of X Road. Mr C expressed his dissatisfaction with how the planning process had been conducted. He indicated he had submitted representations on the Application when it had first been notified to him in March 2002 and had objected to the statement in the Agents' letter of 6 May 2004 that traffic signals at the junction had been approved in principle. Mr C complained that his additional letter of 26 May 2004 (paragraph 12) asking for information had been ignored, that the points raised in his other letter were omitted from the report to the Committee, albeit the Application had been continued to 4 August 2004. As a result, the report included only representations which had been submitted in 2002 to an entirely different scheme with more than one access to the Site. Out of 14 representations listed, 13 had referred to a proposed access at Z Road which had subsequently been dropped.

22. Mr C also expressed incredulity that Officer 1 had given the impression in his letter of 2 August 2005 that planning officers were authorised to delete or to change reserved matters that had been set in place by the Committee. Mr C pointed out that, while for security reasons the majority of householders had opposed a vehicular access at the rear, they had also requested off-street



parking in lieu of the rear access in order to compensate for the loss of on-street parking. Mr C stated that the situation had only been created by the Council advising the applicant to submit an application for an access scheme incorporating traffic lights which they were minded to grant subject to a Section 75 Agreement ensuring that the applicant provided appropriate access to the rear of certain properties affected by the new development. Mr C was aggrieved that the Council were apparently willing to leave householders reliant on the goodwill of the site owner instead of protecting householders' rights. It appeared to him that the Council were acting as agents of the developer rather than as a neutral planning authority.

23. Mr C's letter of 7 August 2005 was acknowledged by the Director on 12 August 2005 and passed to the Head of Development and Environmental Services (Officer 2) to investigate. Officer 2 met with Mr C on 5 September 2005. At that meeting, Mr C stated that while he concurred with the view of the majority of his immediate fellow residents, that there should not be a through access road/path behind their homes, he stated he would be satisfied with a) the provision of a hammerhead from the new access road at the rear of his property only; b) a secure fence at the rear of his property with a secure gate; and c) a lock up garage being provided in his rear garden at no cost to himself. A similar offer had been made previously when the applicant had sought to negotiate sight lines for a non-signalised access at X Road.

24. Officer 2 responded to Mr C on 9 September 2005. He stated that the Council could not be responsible for the content of the Agents' letter of 6 May 2004 (paragraph 10) and that Mr C's letter of representation (paragraph 12) had been received too late to be included in the report to the Committee of 2 June 2004. Officer 2 was satisfied that, in line with normal practice, Mr C's representations had been reported orally by the Council's then Planning and Development Manager to the Committee on 4 August 2004 (when it resumed consideration of the Application) and that the points he made were properly considered and taken account of in determining the Application. Officer 2 accepted that, despite Mr C's request, he had not been advised of the details of the date and venue of the meeting. The Department of Planning and Environment Services had since revised its procedures in the manner in which these matters are dealt with. Officer 2 detailed the events subsequent to 4 August 2004 and stated that Officer 1's letter of 2 August 2005 offered affected householders an opportunity to dispute the view put forward by the Agents and to put forward alternatives. Officer 2 concluded that proper

planning procedures had been followed in this case. He indicated that the matter of the content of the Section 75 Agreement had not yet been finalised and the proper course of action would be for Mr C to submit his views directly to the Planning Department by 27 September 2005. Mr C was informed that he could pursue his complaint with the Chief Executive.

25. Mr C submitted his views on the proposed Section 75 Agreement to Officer 1 in a letter of 22 September 2005. He indicated that he had informed the Agents by telephone on 22 June 2005 what would be acceptable to him and stated that an offer in these terms had previously been made to him on behalf of the applicant on 22 April 1999. Mr C maintained that the Agents had failed to convey to the Council that the residents, at their meetings, had requested secure off-street parking nor had they relayed the content of his telephone call to the Agents (paragraph 19) in which Mr C set out his particular requirements.

26. Officer 1 replied to Mr C on 28 September 2005 stating that he had passed Mr C's requests on to the Agents but emphasised again that the provision of such facilities would be entirely reliant on the goodwill of the developer. Officer 1 stated that existing on-street parking on X Road was not reserved and exclusive to the residents. The developer of the Site could, however, offset the loss by providing new spaces within the development which would not be reserved for the private use of any householders. Officer 1 pointed out that the previous arrangement in 1999 was based on a different proposal. Officer 1 stated that imposing a planning condition requiring the applicant to provide new public car parking spaces within the development to offset the loss of existing space would obviate the need for inclusion in the Section 75 Agreement. The proposed new spaces would form part of the adopted public highway. Officer 1 recognised, however, that this solution would not fully address Mr C's concerns.

27. Mr C responded to Officer 1 on 7 October 2005 clarifying the previous offer made to him in 1999. Mr C pointed out that he would lose the opportunity to construct a front drive-in if the proposals in the Application were implemented. Mr C wished the phrase in the proposed Section 75 Agreement ensuring that 'the developer provides appropriate access to the rear of certain properties' retained. Mr C insisted that the loss of on-street parking spaces would be more than just 'inconvenient'. He would lose an existing amenity that he and his wife relied on daily; deliveries to and collections from his home would

be greatly affected; noise, dirt and fumes would increase; and he would lose privacy.

28. On 24 October 2005, Mr C submitted a letter of complaint to the Chief Executive setting out 19 allegations. This was acknowledged by the Chief Executive on 27 October 2005. In a further letter of 31 October 2005, Mr C sought assurances that he would be sent a copy of the report to the Committee on the reserved matters application pursuant to the Application together with details of the time, date and location of the proposed meeting.

29. The Chief Executive responded to Mr C in a letter of 16 November 2005. He apologised for the fact that following Mr C's letter of 26 May 2004 he had not been sent a copy of the final report nor given details of the date, time and venue of the meeting of the Committee which would consider that report. He stated that procedures had since changed so that if someone objected to a planning application they would be informed of the time and place of the Committee meeting. The Chief Executive stated that while Mr C's letter of 26 May 2004 had been received too late to be included in the report for the 2 June 2004 meeting, his points were reported verbally to the Committee on 4 August 2004. The Chief Executive stated that it was not usual procedure to change Committee reports when a report has been deferred for a site visit. The Chief Executive stated that he considered under the Scheme of Delegation that the Director of Development and Environmental Services was authorised to issue the planning consent once the outstanding matters set out in the Committee members' decision of 4 August 2004 had been resolved. Given that residents had stated that they did not wish provision of any access to the rear of their properties, it was planned to require the applicant to provide additional off-street parking spaces within the Site to offset the loss of on-street parking spaces in the vicinity of the new junction. This could be adequately secured by a planning condition and did not require to be included within the Section 75 Agreement. The Chief Executive stated that the change was not sufficiently significant to require the matter to be referred back to the Committee and when the Section 75 Agreement was completed, the planning consent would be issued under delegated powers in accordance with the Committee members' instructions.

30. Mr C responded to the Chief Executive on 30 November 2005 stating that he did not consider he had answered the issues in detail. No evidence had been provided that the contents of Mr C's letter of 26 May 2004 had been conveyed orally to the Committee on 4 August 2004. Mr C said that the report

on the Application had been completed on 7 May 2004 the very same day that neighbour notification certificates were put in the post by the Agents. He believed that the report should not have been prepared nor should recommendations have been formulated until after representations had been received and considered as part of the decision making process. Mr C was adamant that the Agents' report of his meetings in June 2005 did not reflect the views expressed to him by the residents.

31. On 7 February 2006, the Council sent Mr C a standard letter informing him that the Application had been granted. Mr C, by return, requested a copy of the report and the relevant agenda and minute on the Application. After learning from his local councillor by letter of 8 March 2006 that the decision to grant planning consent had been taken by planning officers, Mr C pursued an information request to obtain a copy of the Minute of Agreement between the Council and applicant and the conditional planning consent (issued on 6 February 2006). He obtained copies of these documents in early April 2006. In a letter of 21 April 2006 to the Council's Head of Legal and Administrative Services (Officer 3), Mr C expressed concern that planning officers had changed conditions set by the Committee (on 4 August 2004) without referring the Application back to the Committee for guidance or approval. He asked whether this was normal and requested a copy of the relevant section of the Council's Scheme of Delegation (Annex 2). He alleged that this had badly affected his rights to develop his property.

32. Officer 3 responded on 28 April 2006, outlining the history of the Section 75 Agreement negotiations. He stated that in the plans, additional public visitor parking (above the level to serve the new development) would be provided close to the junction with X Road, to off-set the loss of on-street parking at the new junction. This matter was controlled by a planning condition and did not require inclusion in the Section 75 Agreement.

33. Mr C wrote again to Officer 3 on 6 May 2006 and repeated his request for sight of the relevant section of the Scheme of Delegation supporting the officers' action in issuing the consent in respect of the Application without further reference to the Committee. In a letter of 11 May 2006 Officer 3 stated that while there were limits to what the Council could legitimately impose by way of planning conditions and Section 75 Agreements, the Council were hopeful that the eventual developer could be prevailed upon to provide an arrangement whereby Mr C would be able to link on to a roadway within the development

from the ground he owned to the rear of his house. The Site was then currently on the market and prospective developers had been advised by council planning officers to incorporate such a feature into any proposed layout. The developer acquiring the Site would be encouraged to contact Mr C to discuss the matter. Mr C responded to Officer 3 on 20 May 2006 acknowledging these positive and optimistic statements, even if it fell short of the protection of his interests offered by the inclusion of rear access in the Section 75 agreement.

**(a) The Council mishandled Mr C's representations on the Application**

34. The Council maintained that Mr C's original representation of 27 March 2002 was considered and taken into account in the preparation of the report on the Application placed before the Committee on 2 June 2004. The report incorporated a statement that any further representations received would be reported orally to the Committee. They stated that Officer 1 prepared a summary of representations received for the then Section Head (Planning and Building Control) to report to the Committee and the minute records that the Committee heard the Planning and Development Manager 'in further explanation'. The Committee continued consideration to enable them to visit. The Council informed me that it was not their practice at that time to prepare a new report or to amend the initial Committee report.

*(a) Conclusion*

35. I am satisfied that Mr C's letter of 27 March 2002 was recorded as a representation on the Application and that adequate reference was made in the report. The report on the Application is dated 7 May 2004, a date before Mr C even received notification of the revised proposals. Mr C was entitled to make representations on how the revised proposals would affect him. Notwithstanding the officers' concern because of the summer recess to progress the matter to the 2 June 2004 meeting of the Committee, the practical effect was to deny those like Mr C who made timely representations on the revised proposals to have their views placed before the Committee rather than summarised for them in an oral presentation by a council planning officer. I believe that was an error of judgement. Since the Application was not determined on 2 June 2004, the opportunity could have been taken to append recently received representations in the form of a supplement to the report when it was re-presented to the Committee on 4 August 2004. Since the minutes of the two meetings are written in a standard form, I can readily see why Mr C was unable to ascertain whether his representations of 26 May 2004 had properly been taken into account in the consideration of the Application.

Neither the report nor the minute actually records how the Committee dealt with the timely representation from Mr C (or others). I uphold the complaint.

*(a) Recommendation*

36. The Ombudsman recommends that the Council review their procedures in order to ensure that in similar future circumstances objectors have confidence that their timely representations are fully considered and reported on.

**(b) The Council prepared a report on the Application prior to the expiry of the period for representations**

37. The Council accepted that their planning officers had prepared the report on the Application before the neighbour notification period had expired. They considered this to be a reasonable procedure which did not cause any injustice to Mr C. The Council had had the four applications before them for over two years. If the applications had not gone to the 2 June 2004 meeting, then they would have been delayed a further two months. The report anticipated that there might be representations following re-notification, but these would be reported upon orally at the Committee meeting. The Council informed me that the desirability of complete and comprehensive Committee reports has to be balanced against the need to avoid unnecessary delays.

*(b) Conclusion*

38. I accept the general principle that, for a variety of reasons, reports can be prepared in advance of the expiry of the period for representation following neighbour notification. The fact that the Application had been under consideration for over two years can be used both to justify preparing the report in advance of the expiry of the period for representation to avoid further delay or to sanction waiting a little longer and preparing a more comprehensive report for the next meeting two months later. While planning officers acted with a view to obtaining a decision before the summer recess, members of the Committee on 2 June 2004 deferred a decision until after a site visit. This in effect resulted in a postponement of the decision until 4 August 2004. In my view the opportunity should have been taken to supplement the original report on the Application and to outline and address issues raised by Mr C and any other objectors in relation to the amended proposals of April 2004. I can readily understand Mr C's concern that the report addressed issues raised in 2002 but did not incorporate more pertinent recent objections which were within time. I uphold this complaint.

*(b) Recommendation*

39. The Ombudsman recommends that the Council review their procedures on issuing reports for consideration where the period for representations has not expired.

**(c) The Council failed to meet Mr C's requests for information on their report and the minutes relating to the consideration of the Application**

40. The Council confirmed, on 27 May 2004, receiving Mr C's second letter of 26 May 2004 (paragraph 12) in which he requested that he be provided with a copy of the final Committee report or, failing this that he be informed of the date, time and venue of the Committee meeting. Because of the intervening bank holiday weekend, it was not read by the case officer until his next workday, Tuesday 1 June 2004, the day before the Committee were to meet. Officer 1 dealt with the first letter but did not deal with the second letter requesting information. By 1 June 2004, it was too late to post a copy of the Committee report to arrive before the meeting. Officer 1 also incorrectly believed that Mr C would, in light of his earlier letter of objection of 27 March 2002, have received formal notice of the Committee arrangements. That was not the case.

41. The Council accepted that, regrettably, Mr C was not advised of the dates of either of the two Committee meetings, and that because of the omission, Mr C did not have the opportunity to attend and to witness the Council's discussion of the Application. The Council's former Chief Executive apologised to Mr C in his letter of 15 November 2005. Since 2004, the Council have revised their procedures and all persons who make representations are now automatically informed of the meeting of the Committee which will consider an application.

42. Mr C was informed by letter of 7 February 2006 of the decision to grant conditional outline consent to the Application (paragraph 31) following completion of negotiations on the Section 75 Agreement.

*(c) Conclusion*

43. Although the Council consider the failure to respond to Mr C's request for information of 26 May 2004 to be an unfortunate oversight and did not consider it was discriminatory, the Agents were in attendance at the 4 August 2004 Committee meeting. While they did not address the Committee, they nevertheless were able to respond to a question put to them by a member at the meeting. I can see why Mr C considers that to be unfair. I uphold the

complaint. The Ombudsman considers that the apology tendered by the former Chief Executive is sufficient remedy.

**(d) Council officers took an over-active interest in promoting the developer's interests particularly regarding access**

44. The Council emphatically deny Mr C's allegation that they gave undue weight to the applicant's interests. Following correspondence and telephone calls from Mr C and his neighbours, which disclosed divided opinion on a rear access lane, planning officers had suggested that the Agents meet with residents. To prepare for this, Officer 1 had written to householders on 3 June 2005 to explain the situation. Following the Agents' meeting with householders, a report had been prepared by the Agents. Officer 1 thereafter wrote to the householders on 2 August 2005 in order to give them the opportunity to make further comment, and to safeguard their position by ensuring they were not misrepresented. The Council denied that they undertook any feasibility study on behalf of the applicant. The Council's Roads Service assessed a series of proposals submitted by the Agents and advised them on acceptability. The Council said that this was part of a normal process. The Council stated that several alternatives were considered, including employing a new non-signalised junction, a new roundabout, use of Y Road, and a number of combinations, all of which were for various technical reasons unacceptable. The Agents demonstrated to the satisfaction of officers of the Council's Roads Service that a new signalised junction would be an acceptable technical solution in terms of the Council's adopted Roads Development Guide.

*(d) Conclusion*

45. Access to the Site and the proposal for a rear access lane behind the homes of Mr C and his neighbours were only part of the overall consideration of the Application. The treatment of the junction was, however, very important for Mr C's amenity. It is not uncommon for traffic lights to control access to significant residential developments such as this. I see no evidence that the Council instructed the Agents to propose the cheapest solution or that the option of a signal controlled junction is technically unacceptable. It is a possibility that Mr C might have been inconvenienced by not being able to park in front of his house or to create off street parking to the front of his house, whatever form the junction took. I do not uphold this complaint.



**(e) The Council planning officers inappropriately issued the outline consent without further reference to the Council's Planning Committee**

46. The Council's Scheme of Delegation (Annex 2) provides for the Director to grant approval to applications for planning permission or variations to planning applications or the fulfilment of conditions attached to planning permissions and all powers ancillary or reasonably necessary for the proper performance of those duties.

47. Mr C considers that Council officers acted outside their delegated powers in not referring the matter back to Committee when a suitable augmentation of the originally proposed Section 75 agreement to ensure that the applicant provided access to the rear of certain properties affected by the development could not be agreed.

48. The Council stated that the report prepared for the 2 June 2004 Committee meeting had recommended that a Section 75 Agreement be employed purely to ensure that the conversion of a listed chapel on the Site took place at the same time as the main housing development. Combining the two elements together could not be done effectively through a planning condition. Mr C and two other householders in May 2004 made representations expressing concern about the consequence of introduction of some form of parking restriction on X Road. Planning officers did not, however, consider the applicant could be forced to provide replacement parking. The Council entered into negotiations with the Agents who indicated a willingness to form a lane so as to permit Mr C and his neighbours to form rear driveways if they so wished. Planning officers recommended that this too be included in the Section 75 Agreement and the Committee agreed to this on 4 August 2004. Only one out of six residents favoured the creation of a lane. The Agents informed Officer 1 that the applicant was unwilling to provide a secure private parking area for the six residents or to meet the specific measures put forward by Mr C. After further discussion, the Agents were willing to provide some additional visitor parking spaces within the Site in a location close to X Road to offset the loss of existing on-street spaces. Officer 1 considered these could be secured by an appropriate condition in the planning consent and did not require inclusion in the Section 75 Agreement. Mr C was informed by the former Chief Executive on 15 November 2005 that the change was not sufficiently significant to require the matter to be referred back to the Committee. The permission, which included a condition (condition 8) relating to replacement car parking provision was issued under delegated powers on 6 February 2006.

49. The Council's Chief Executive informed me that under the Council's Scheme of Delegation, planning officers are authorised to 'add further conditions to applications determined by the Council as a result of responses from outstanding consultations, provided that such conditions are not deemed to be onerous' and to exercise 'all powers ancillary to or reasonably necessary for the proper performance of any of the foregoing duties or powers'. The Council considered that planning officers were acting within their powers to vary the terms of the proposed Section 75 Agreement and to add a further appropriate planning condition, particularly when most of the local residents were strongly opposed to the access lane. The Section 75 Agreement continued to perform its principal purpose.

*(e) Conclusion*

50. I acknowledge that Mr C is not happy that the matter was not referred back to Committee when a suitable augmentation of the Section 75 Agreement to meet the needs of the residents could not be agreed. He considers that the Scheme of Delegation did not provide officers with specific powers to conclude a Section 75 agreement on a basis other than as instructed by the Committee and he is aggrieved that planning consent for the Application was issued without further reference to committee.

51. It is clear to me that officers strove, albeit unsuccessfully, to reconcile the different demands of residents. Concluding the Section 75 agreement as instructed by the Committee on 4 August 2004, would have been contrary to the wishes of five out of six of the householders. Mr C's particular complaint rests less on a procedural irregularity than with his disagreement over the officers' exercise of delegated powers to issue the consent. It is not for the Ombudsman's office to pronounce on whether the officers acted beyond the powers granted to them by the Council's Scheme of Delegation. While the particular instance is not specified, the Director undoubtedly is granted general powers under the Scheme of Delegation. While, with hindsight, I consider it would have been preferable in the interests of transparency for officers to have reported again to the Committee for their information before the conditional outline consent was issued on 6 February 2006, that does not in my view imply that Mr C would have had a further opportunity to make representations on the Application prior to the issue of the consent. On balance, I do not uphold this complaint.

52. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

**Explanation of abbreviations used**

Mr C	The complainant
X Road	The road where Mr C resides, identified as the main access to the Site in the Application
The Site	The 3.3 hectare site of the former convent grounds
The Council	West Dunbartonshire Council
The Application	One of four applications for planning permission and listed building consent submitted to the Council in 2001 and registered on 19 March 2002, seeking outline consent for residential development
Y Road	Another road bordering the Site
Z Road	A third road bordering the Site
The Agents	The agents who submitted all four applications on behalf of the applicant
The Committee	The Council's Planning Committee
Section 75 Agreement	A legal agreement entered into by the applicant with the Council under section 75 of the Town and Country Planning (Scotland) Act 1997, initially to ensure that implementation of two elements of the overall development proposals were tied in with each other

The Director	The Director of Development and Environment Services
Officer 1	The planning case officer
Officer 2	Head of Development and Environment Services
Officer 3	Head of Legal and Administrative Services

### **The Council's Scheme of Delegation to Chief Officers (August 2001)**

The Council's Scheme of Delegation to Chief Officers generally provides for the Director of Planning and Economic Development to exercise a number of delegated powers in respect, *inter alia*, of granting approval to applications for planning permission or variations to planning permissions or the fulfilment of conditions attached to planning permissions and all powers ancillary or reasonably necessary for the proper performance of those duties. Section 3 (i) of the Director's specific delegated powers allow him/her to 'add further conditions to applications determined by the Council as a result of responses from outstanding consultations, provided that such conditions are not deemed to be too onerous'.

Five qualifications to the Director's powers of approval are stipulated namely, delegated powers shall not apply where: a) there is significant relevant written objection raising previously unaddressed issues not covered by approved design guidance; b) regulation/financial probity require that the matter be dealt with by referral to Members; c) there is an intention to attach an onerous condition to any permission, licence or approval, unless such condition is standard in relation to established policy; d) it is considered that the matter to be determined deals with, or could raise new matters of policy or practice, which ought properly to be determined by Members; and e) the Director deems it appropriate in the particular circumstances not to exercise the powers delegated to him/her in which case the delegated power would be exercised by the Committee.

The Head of Legal and Administrative Services is granted delegated powers, *inter alia*, to sign all deeds and other documents which require to be sealed and to execute, on behalf of the Council, such other documents as may be necessary.

The Scheme allows for updating by the appropriate Director notifying the Chief Executive and the Director of Corporate Services in writing of the specific power he or she wishes to exercise, in advance of exercising the same.