

Case 200603359: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Planning and enforcement

Overview

The complainant, referred to as Mr C, raised a number of concerns regarding planning and enforcement issues with The City of Edinburgh Council (the Council). He remained dissatisfied with the Council's final response to his complaints and asked the Ombudsman to investigate.

Specific complain and conclusions

The complaints which have been investigated are that:

- (a) Mr C's neighbour received planning permission to erect a sun room which breached planning guidelines (*not upheld*);
- (b) the Council advised Mr C that Permitted Development Rights (PDR) had been withdrawn, when in fact this was not the case (*not upheld*); and
- (c) the Council advised Mr C that the fence at the rear of his property required planning permission, only to advise him later that the fence did not require planning permission (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) make a full formal written apology to Mr C for providing conflicting and confusing information in relation to the fence at the rear of his property; and
- (ii) consider ways of ensuring that relevant staff seek advice when complicated and sensitive situations arise.

Main Investigation Report

Introduction

1. Mr C's neighbour received planning permission to build a sun room. While Mr C did not object to the request for planning permission he contacted The City of Edinburgh Council (the Council) as the sun room was being built, stating that he believed the construction did not comply with planning guidelines in relation to floor levels and privacy. He requested an inspection of the ongoing work to address the problem. The Council's response reflected that the sun room was built in accordance with approved plans; account had been taken of floor levels and privacy issues and the Council was satisfied that the application had been handled in an appropriate manner.

2. To address the issue of privacy, Mr C erected a two metre high fence. He was advised by the Council's Enforcement Officer that, when the original consent for the housing development was granted, it was subject to a condition under the terms of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992, which removed Permitted Development Rights (PDR) for dwelling houses, meaning that he would, therefore, have to remove the fence. Mr C subsequently confirmed that the PDR had not in fact been removed and challenged the Council to provide confirmation of the basis for their decision. The Council did not produce the requested confirmation, however, they subsequently advised Mr C that he required planning permission for the fence, only to later inform him that planning permission was not in fact required.

3. Mr C complained to the Council about the service he had received. His complaint was investigated, however, he remained dissatisfied with the Council's final response and asked the Ombudsman to investigate.

4. The complaints from Mr C which I have investigated are that:

- (a) Mr C's neighbour received planning permission to erect a sun room which breached planning guidelines;
- (b) the Council advised Mr C that PDR had been withdrawn, when in fact this was not the case; and
- (c) the Council advised Mr C that the fence at the rear of his property required planning permission, only to advise him later that the fence did not require planning permission.

Investigation

5. Initially, I considered the information provided by Mr C, together with the Council's responses to his enquiries and complaints. I then wrote to the Council in September 2007, requesting various documents and a response to my further enquiries related to the case. I also examined The Town and Country Planning (General Permitted Development) (Scotland) Order 1992. My findings are based on this evidence.

6. 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 Board were given an opportunity to comment on a draft of this report.

(a) Mr C's neighbour received planning permission to erect a sun room which breached planning guidelines

7. In June 2006 Mr C's neighbour submitted a planning application to the Council to erect a sun room at the rear of their property. In considering the application, the Council decided that the proposed extension would not result in overshadowing and that the existing boundary wall provided an adequate screening function for privacy purposes. No objections to the application were received and planning permission was granted in August 2006.

8. In October 2006 Mr C wrote to the Council to explain that building work had begun, however, he believed that the construction of the new sun room did not comply with planning guidelines. Specifically, he raised concerns about privacy and the distance of the new construction from the boundary wall.

9. Mr C's enquiry was responded to by the Council's Head of Planning and Strategy in December 2006. He explained that the Council's non-statutory guidance on 'daylighting', sunlight and privacy policy stated that 'to maintain an acceptable level of privacy to adjoining properties all ground floor main windows in new buildings, extensions and conservatories should be at least nine metres from boundaries. In the case of single storey extensions and conservatories this distance may be reduced if two metre high screening is employed and if adequate daylighting still reaches the window in question'.

10. The Council's response went on to explain that both Mr C's sun room and the new sun room being erected by his neighbour were within nine metres of the boundary, however, the existing stone boundary wall was considered to provide an adequate privacy screen.

11. Mr C was also advised that the decision to grant planning consent was made, taking account of these issues, and in accordance with the adopted local plan and other material considerations. The letter concluded by stating that the planning application had been processed properly and was appropriate. Mr C was also reminded that planning regulations did not allow for a third party to appeal a planning decision.

12. Mr C wrote again to the Council in February 2007 to suggest that account had not been taken of the finished floor level in his neighbour's sun room, which resulted in an unacceptable intrusion into his privacy. The Council's response, however, advised him that the finished floor levels were taken into account when assessing the planning application and were deemed to be acceptable. He was also advised that his neighbour's sun room had been built in accordance with the approved plans.

13. I asked the Council to clarify their position on the finished floor level of the sun room. I was advised that the approved plans indicated that the sun room would be built at the same level as the house. The Council acknowledged that this meant there would be a limited degree of overlooking but considered this not to be unreasonable.

(a) Conclusion

14. In this particular case, Mr C contested that the construction of the new sun room did not comply with planning guidelines. He contacted the Council once the construction had commenced. The Council investigated his claim, however, not only did they find that the construction did comply with planning guidelines, they also confirmed that the issues about which Mr C had raised concern had been taken account of in approving the original planning application.

15. Based on the evidence I have seen, I am satisfied that the planning application was handled appropriately and the Council complied with their planning guidelines. Accordingly, I do not uphold this complaint.

(b) The Council advised Mr C that PDR had been withdrawn, when in fact this was not the case

16. In January 2007 the Council's Planning Enforcement Officer wrote to Mr C regarding the fence he had erected at the rear of his home. Mr C was advised

that the PDR had been withdrawn within his housing development and, therefore, the fence erected by Mr C was in 'breach of planning control'.

17. The letter went on to advise Mr C that the fence and all associated fixtures should be removed within 21 days and that failure to comply would result in a report being submitted to the Planning Committee to request that formal action be commenced to 'have this breach remedied'.

18. Mr C obtained a copy of the Planning Permissions for the housing development and could find no reference to the removal of PDR. He, therefore, contacted the Council in February 2007 requesting documentary evidence that PDR had in fact been withdrawn, however, he advised me that the requested confirmation was not provided.

19. In response to Mr C's challenge that PDR had not been withdrawn, the Council's Principal Planner wrote to him in February 2007. He advised Mr C that he had reviewed the planning application for the development and confirmed that the fence erected by Mr C was not in breach of planning control. He went on to explain that PDR had been removed in relation to alterations and extensions of dwelling houses but, as the erection of fencing is classed as 'sundry minor operations', the removal of PDR was not applicable. The Principal Planner advised that no further action would be taken and apologised for any inconvenience caused to Mr C.

20. Following a site visit in March 2007, the Council wrote to Mr C to confirm that, as the fence would not exceed two metres in height, it did not need to be subject to a Building Warrant application.

21. I asked the Council to explain why Mr C was advised that PDR had been withdrawn. I was advised that the original consent for the housing development was subject to a condition which stated 'notwithstanding the provisions of the General Permitted Development Order, the dwellings shall not be altered externally or extended without the prior written approval of the planning authority'. This effectively removed the PDR for the development and was the basis for notifying Mr C that his fence was in breach of planning control. The Council went on to advise me that the Planning Enforcement Officer had incorrectly interpreted this condition to include fencing.

22. Permission to carry out certain limited forms of development without the need to make an application for planning permission is subject to legislation. My examination of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 clarified that 'development within the curtilage of a dwellinghouse' is covered by classes 1 to 6 while 'sundry minor operations' (which includes fencing) are covered by classes 7 to 9.

(b) Conclusion

23. I recognise that this was a stressful time for Mr C. He felt that his neighbour's new sun room imposed on his privacy, therefore, to address this issue he erected a fence.

24. The receipt of a letter from the Council's Enforcement Officer advising him that the fenced breached planning control and should be removed must have added to his concerns.

25. It is to Mr C's credit that his research cast doubt on the Council's decision. His challenge of that decision led to a review of the original planning conditions for the housing development. It was from this review that the Council realised that the withdrawal of PDR did not apply to fencing.

26. That the Council misinformed Mr C regarding the PDR is not in doubt. A mistake in interpreting the original planning conditions was made, and based on that mistake the Council erroneously advised Mr C that PDR had been withdrawn.

27. In considering my response to this complaint, I recognise that mistakes can and do occur. What I consider to be important is how the Council responded when it became clear they had made a mistake. I found that the period from the enforcement letter being issued to the Council accepting that an error had occurred was only ten days. I recognise also that on identifying that a mistake had occurred, the Principal Planner provided an apology to Mr C.

28. In concluding my deliberation on this complaint, while I accept Mr C's view that the Council provided incorrect advice, I also recognise that the Council acted quickly to remedy this mistake after Mr C queried the basis for their decision. They provided an explanation as to what had gone wrong and they also apologised to him. On that basis, I do not uphold this complaint.

(c) The Council advised Mr C that the fence at the rear of his property required planning permission, only to advise him later that the fence did not require planning permission

29. I mention in paragraph 2 that, in order to address the issue of his privacy, Mr C erected a two metre high fence at the rear of his property. Following some confusion over PDR, Mr C was advised that the fence did not breach planning control and was not subject to a Building Warrant application.

30. Mr C was surprised, therefore, to be subject to a further site visit by the Enforcement Officer in April 2007, following which the Council wrote to him, this time advising him that the fence did in fact require planning permission. The Council advised me that the matter was reopened following further work to the fence structure by Mr C, which had been reported by a neighbour toward the end of March 2007.

31. The reason for this decision was that 'the fence in its entirety is within 20 metres of a road and such cannot exceed one metre in height without the need for planning consent'.

32. The Council advised Mr C that, within 28 days, he should either, submit a planning application for the fence, reduce the height of the fence so that it did not exceed one metre or remove the fence and all associated fixtures.

33. Mr C responded to the Council in April 2007, highlighting the fact that he had previously received letters from them (in February and March 2007) indicating that the fence was not in breach of planning control and did not require a Building Warrant. He said that he found it 'inexplicable' how the Enforcement Officer had produced 'yet another reason' for interfering with his fence and questioned the motives of the Council in their handling of this issue.

34. In the meantime, Mr C had asked his Councillor to investigate the Council's handling of this matter. In May 2007 the Councillor wrote to Mr C to advise him that, technically, his fence required planning permission due to its proximity to the road, however, 'the enforcement team will take no action on the fence as it currently stands'.

35. I asked the Council to explain why Mr C had been advised that PDR allowed for him to construct the fence and that a building warrant was not required, only to be later told that the fence did in fact require planning

permission. As I report in paragraph 30 the matter was reopened following a complaint from a neighbour.

36. The Council also advised me that the relevant PDR stipulated that fences within 20 metres of a road could not exceed one metre in height without formal planning consent. The Council acknowledged that 'the earlier letters which stated the fence was permitted were not wholly correct'. However, while observing that rear garden fences very often require planning consent, working practice is to take a pragmatic view and disregard the requirement for planning consent where a fence is behind the building line.

37. The Council said that, in this case, they concluded that, having already agreed a similar fence in the same location would be acceptable, further action in respect of Mr C's fence could not be justified.

38. I asked the Council what arrangements were in place to ensure a coordinated and joined up approach in dealing with planning and Building Warrant matters. I was advised that, while there are no written guidelines, the ethos promoted over many years is one of coordinated working on cases and, to facilitate this, staff are located in close proximity to each other and consult where there is a need to do so.

39. From my examination of the paperwork provide to me by Mr C and the Council, I could find no evidence that the Council had formally written to Mr C to either explain how this matter had been handled or to apologise for providing Mr C with conflicting information.

(c) Conclusion

40. The Council have accepted that the letters issued to Mr C advising him that his fence did not breach planning control and was not subject to a Building Warrant application 'were not wholly correct'.

41. The Council have also acknowledged that, although rear garden fences very often require planning consent, working practice is to take a pragmatic view and disregard the requirement for planning consent where a fence is behind the building line.

42. The events leading to Mr C being misinformed as to whether or not his fence was subject to planning control were the culmination of a series of

communications between him and the Council between October 2006 and March 2007. He had previously been provided with incorrect information regarding the PDR and it is wholly understandable that the provision of further conflicting information from the Council regarding his fence would have added to his concerns.

43. I am satisfied that the Council acted correctly in responding to the neighbour's complaint. I am satisfied also that if the fence was within 20 metres of a road, technically it required planning consent for the reasons given by the Council. However, as the Council acknowledged, they had previously accepted that a similar fence in the same location was acceptable. I would have expected this fact to have been taken account of before Mr C was advised of the requirement for planning consent.

44. Having received the earlier confusing correspondence regarding PDR, the failure to then take account of the full planning situation relating to the fence must have compounded the frustration and confusion felt by Mr C.

45. In the circumstances of this case, where Mr C had been corresponding with the Council for several months, I consider that the case officer should have been aware of the sensitive nature of the situation and should have sought the advice of more experienced or senior staff.

46. Finally, given that Mr C was provided with conflicting information, it would have been reasonable for the Council to explain why this happened and to apologise for the inconvenience caused to Mr C. In all the circumstances, I uphold this complaint.

(c) Recommendations

47. The Ombudsman recommends that the Council:

- (i) make a full formal written apology to Mr C for providing conflicting and confusing information in relation to the fence at the rear of his property; and
- (ii) consider ways of ensuring that relevant staff seek advice when complicated and sensitive situations arise.

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

Explanation of abbreviations used

Mr C	The complainant
The Council	The City of Edinburgh Council
PDR	Permitted Development Rights

List of legislation and policies considered

The Town and Country Planning (General Permitted Development) (Scotland) Order 1992