

**Case 200604111: The City of Edinburgh Council**

**Summary of Investigation**

**Category**

Local government: Planning: Handling of Planning Application complaint from objector

**Overview**

The complainant (Mr C) raised a number of concerns regarding the handling by The City of Edinburgh Council (the Council) of an application (the Application) for planning consent made by his neighbour (Mr N) for alteration to and extension of his property.

**Specific complaints and conclusions**

The complaints which have been investigated are that the Council:

- (a) failed to ensure that Mr N complied with the requisite notification of his proposals (*partially upheld*);
- (b) failed to take action on a neighbour notification received by Mr C on 16 March 2006 which was clearly invalid (*partially upheld*);
- (c) failed to respond to Mr C's request of 25 April 2006 for information on when the Application would be considered and if he could address the Development Quality Sub-Committee (*upheld*); and
- (d) compiled a report on the Application without a site visit by a planning officer and which contained errors of fact and incorrect interpretation of their own policies (*not upheld*).

**Redress and recommendation**

The Ombudsman recommended that the Council apologise to Mr C for their identified failings.

The Council have accepted the recommendation and will act on it accordingly.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) resides in a detached house in Edinburgh. His complaint centres on the processing of an application (the Application) by his next door neighbour (Mr N) for planning permission for alterations and extension of his property with a dormer to be formed at the rear.

2. The complaints from Mr C which I have investigated are that The City of Edinburgh Council (the Council):

- (a) failed to ensure that Mr N complied with the requisite notification of his proposals;
- (b) failed to take action on a neighbour notification received by Mr C on 16 March 2006 which was clearly invalid;
- (c) failed to respond to Mr C's request of 25 April 2006 for information on when the Application would be considered and if he could address the Development Quality Sub-Committee (the Committee); and
- (d) compiled a report on the Application without a site visit by a planning officer and which contained errors of fact and incorrect interpretation of their own policies.

### **Investigation**

3. The investigation is based on information supplied by Mr C and the Council's responses 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.

4. The eastern boundary of the property of Mr C and his wife (Mrs C) adjoins the property of Mr N and his wife (Mrs N). In 1976, Mr and Mrs C constructed a sun room on the side of their property at the rear nearest Mr and Mrs N's property. In March 2002, Mr N applied for planning consent for alterations and extension to his property with a dormer to be formed at the rear. That application was refused by the Council and dismissed on appeal by the Scottish Executive<sup>1</sup> Inquiry Reporter on 20 March 2003.

---

<sup>1</sup> On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

5. On 2 March 2006, the Council received a further application (the Application) from a firm of architects (the Architects) seeking planning permission to alter and extend Mr and Mrs N's home and to form an attic conversion. The Application was regarded as deficient. On 7 March 2006, a letter was sent to the Architects stating that the Application contained an incomplete description and that the description should include dormers and roof lights. The Architects were advised that neighbours should be re-notified with the (correct) description.

6. On 16 March 2006 Mr and Mrs C received neighbour notifications dated 23 February 2006, with the description 'alter and extend and form attic conversion with dormers back, front and roof lights'. They informed me that these were the first set of notices they received. The notices to 'Mr and Mrs C' and 'the occupiers' were both dated 23 February 2006 and indicated submissions should be submitted to the Council within 14 days.

7. The Council's records indicate that they regarded the Application to have been validated on 15 March 2006.

8. Mr C contacted the planning case officer (Officer 1) by email on the morning of 24 March 2006 pointing out that he had received neighbour notifications dated '22.02.06 on 16.02.06' (sic). Mr C expressed concern that his conservatory extension was not shown on the plans. He stated that he was concerned about the side windows shown on the plans and their effect on his privacy.

9. Officer 1 responded the same afternoon. She stated that the Application was validated on 8 March 2006 (sic) and 'the 21 day period' for representation would expire on 29 March 2006. She advised Mr C to communicate his concerns about privacy in writing to the Planning Department by that date. Officer 1 assured Mr C that a case officer always undertook a site visit to assess distances to boundaries and any neighbouring extensions.

10. In a further email of 27 March 2006, Mr C confirmed that he did not receive neighbour notifications until 16 March 2006 and they were dated 23 February 2006. He stated that the notices he and his wife received were clearly incorrect and on the face of it invalid. Mr C expressed concern at the lack of time afforded him to check the law, to take advice, and to make any

appropriate submissions. Mr C stated that he had located the Council design principles for new development on the website but asked Officer 1 whether there were any other sources he should consult in order to fully inform himself on relevant issues.

11. Letters of objection from Mr and Mrs C and from another neighbour (Mrs M) were submitted by Mr C on 28 March 2006 at 18:50.

12. Mr and Mrs C's letter was acknowledged on 31 March 2006 as having been received on 29 March 2006 and was deemed to be a 'material objection'.

13. On 3 April 2006 Mr C submitted further representations by email in respect of the Application pointing out: firstly the deficiencies in the neighbour notification procedure in that timely notification was not given and, secondly, that Mr N had informed Mr C that he could not source the harling and slates specified in the Application plans.

14. Receipt of these email representations was acknowledged automatically by Officer 1's computer on 3 April 2006 and also by the computer of a council solicitor to whom the email had been copied.

15. Mr C emailed Officer 1 again on 25 April 2006 to establish why he had not had a response to his earlier representation of 3 April 2006. In the email of 25 April 2006 Mr C asked for confirmation that his objections would be brought to the attention of the Committee. He also sought clarification of the progress of the Application, and specifically enquired when it would be considered in the Committee, and whether he could attend.

16. On 25 April 2006 the Council's Head of Planning and Strategy (Officer 2) wrote to Mr C informing him that a representation received on 25 April 2006 was deemed to be 'non-material'. This caused Mr C confusion.

17. No reply was sent to Mr C's email of 25 April 2006. In the meantime a report on the Application was prepared by Officer 1 on 27 April 2006 for submission to the Committee on 3 May 2006. The report to the Committee detailed that there had been four letters of objection.

18. The report to the Committee was in the Council's standard format and set out details of the site, the proposal, relevant planning policy, Officer 1's

assessment and her recommendations. In respect of representations received it stated that an issue had been raised over the notification procedure undertaken by the applicant and the period for making representations. The applicant had confirmed that notification was undertaken on 15 March 2006 and the period of representation had been extended to take account of this. The report to the Committee stated that a total of four letters had been received, that three were objections, and that one was not material to the determination of the Application. The main grounds of objection were described as (a) scale detrimental to the surrounding neighbourhood; (b) privacy; and (c) loss of daylight. Officer 1's recommendation was to grant full consent to the Application subject to the sole condition that the development permitted should be commenced no later than five years from the date of the consent.

19. Mr and Mrs C were informed of the decision on the Application by letter dated 5 May 2006 which they say they received on 11 May 2006.

20. Meanwhile, on 7 May 2006, Mr C sent an email to Officer 2 in response to his letter of 25 April 2006 pointing out that there had been no response to his request for progress on the consideration of the Application and that it had not been confirmed to him whether he could attend the Committee meeting.

21. Officer 2 replied on 12 May 2006 indicating that the Council appeared to have had two representations from Mr C dated 29 March and 25 April 2006. He also stated that the point about the neighbour notification procedure had been raised with Mr N who confirmed that these had been sent out on 15 March 2006. He referred Mr C to a statement in the Council's Planning Charter for Development Control that it was not appropriate for planning officers to keep individuals in touch with the Council's progress on assessing applications. Officer 2 informed Mr C that the Application had been approved on 3 May 2006 and that a copy of the report to the Committee was available on the Council's website.

22. On receiving this letter, Mr C contacted his local councillor (the Councillor). There were further exchanges involving the Councillor, Officers 1 and 2 and an Acting Group Leader (Officer 3) and the Chief Executive. On 25 May 2006 Officer 3 confirmed 15 March 2006 as the date of validation and stated that Mr C's letters of representation had been acknowledged. She also informed Mr C that if he was not satisfied with the manner in which the Application was

handled, he could refer the matter to the Ombudsman. These exchanges ended with a letter from the Chief Executive to the Councillor on 6 July 2006.

23. Mr and Mrs C subsequently complained to the Ombudsman in a letter of 27 March 2007. They detailed their complaint in an eight page attachment in which they made nine allegations namely: errors and unfairness in the planning process, defects in the report to the Committee on which a decision to grant consent was made, disregard by various officers of the Council of Mr C's rights, disregard by officers of illegalities and criminal conduct in the planning procedure that had been drawn to their attention, failure by officers to follow their own procedures, failure by officers to communicate with Mr C, failure by officers to identify and properly deal with issues, and failure by officers to properly recognise and communicate procedures for complaining to the Ombudsman. In assessing the complaint I informed Mr C that my investigation would deal with the four aspects set out in paragraph 2. When Mr C subsequently queried the other matters, I explained why we would not pursue these.

**(a) The Council failed to ensure that Mr N complied with the requisite notification of his proposals; and (b) The Council failed to take action on a neighbour notification received by Mr C on 16 March 2006 which was clearly invalid**

24. The Council informed me that every application is checked by technicians for completeness on submission. This includes checking a certificate by the applicant that appropriate neighbours have been notified. The application form makes it clear that it is an offence to make a false declaration to this effect. The Council stated that, in this instance, when it was pointed out that neighbour notification had not been carried out until later, the applicant was contacted. The Council supplied me with a copy of an email of 29 March 2006 from Mr N to Officer 1 which had followed on an earlier telephone call to Mrs N. This email confirmed that Mr N had picked up the neighbour notifications dated 23 February 2006 from the Architect in order to deliver them but had not done so at the time. After the Architect had informed him that the description was not full enough, Mr N had altered the description in ink himself but had not changed the date. Upon learning that the Application had been validated, Mr N hand-delivered the notifications on 15 March 2006.

25. The Council maintained that neighbours were not prejudiced by the lateness of the notification as the period for comment was extended and it is

clear that those who wished to comment were able to do so as was evidenced in the fact that three letters of objection were included in the Committee papers.

*(a) and (b) Conclusions*

26. I only partially accept the Council's argument on these heads of complaint. The Council viewed the initial description of the proposal as inadequate. That description was changed by Mr N on the neighbour notifications without the date being altered. The Council would not have seen copies of the notifications, only a certificate that neighbour notification had been carried out which had, by Mr N's own admission, not happened before the Application was validated. Anyone receiving a neighbour notification dated 23 February 2006 on 15 or 16 March 2006 would be entitled to question its lateness and whether they still had time to make representation. Mr C did just that and checked the position with the Council who in turn contacted Mr N. Mr N confirmed what he had done. The Council carried out their statutory duty by confirming that Mr N's certification that he had notified neighbours was correct.

27. Whether he had correctly notified neighbours is another matter. The date on the neighbour notification of 23 February 2006 pre-dated the actual service by some 22 days. The Council were first informed of these dates in Mr C's email of 27 March 2006. It would have been open to them to have requested Mr N or the Architect to carry out a re-service. They did not do this but were content to take the pragmatic line of checking that service of the notifications had been carried out and when. The intent of the legislation was met but the letter of the law appears to me to have been ignored. Due in large part to his own actions, Mr C was not substantially prejudiced. I am unable to see an injustice to him which requires to be remedied. Mr C was aware of the Application and made an appropriate objection. However, I believe that best practice would have been to have required Mr N or the Architect to re-notify when Mr C brought the defect in notification to their attention. To this extent I partially uphold the complaint.

*(a) and (b) Recommendation*

28. The Planning etc (Scotland) Act 2006 will transfer responsibility for neighbour notification from the applicant to the planning authority. This should help avoid a recurrence of the circumstances of this complaint. In light of this the Ombudsman has no recommendation to make.

**(c) The Council failed to respond to Mr C's request of 25 April 2006 for information on when the Application would be considered and if he could address the Committee**

29. In response to my enquiry the Council apologised that Mr C did not receive a reply to his email of 25 April 2006. They stated that their Charter for Development Control indicates that they will update third parties on progress if this is requested, but they cannot inform these parties beforehand of when an application will be considered in the Committee. This is not known until an agenda is finalised and the Council do not have the resources to perform this service to the many interested parties on all applications. The Council's agendas and reports for meetings are, however, available online from around a week ahead of the meeting for the public to view. The Council stated that as this was not a major development proposal, the parties involved would not in any event have been heard by the Committee.

*(c) Conclusion*

30. I uphold the complaint. It would have been a relatively simple matter to have responded to Mr C's email by making reference to the Council's Charter for Development Control and the Council's website. However, I also consider that Mr C, having already made timely representation, would not have gained through knowing the proposed date of consideration nor, given the type of application, was it likely that would he have been able to speak to his objections at the Committee.

*(c) Recommendation*

31. The Ombudsman recommended that the Council apologise to Mr C for their identified failings.

**(d) The Council compiled a report on the Application without a site visit by a planning officer and which contained errors of fact and incorrect interpretation of their own policies**

32. Mr and Mrs C's substantive letter of objection of 29 March 2006 to the Application highlighted the dominant single storey bungalow type housing in the area and the likely effect on their privacy, daylight, sunlight and immediate outlook. They believed the proposed increase in height of Mr and Mrs N's house and considerable extension beyond the rear boundary line would be out of scale and inappropriate. They understood the materials used in the original building were now unobtainable. They pointed out that the plans submitted by the Architect did not reveal the existence of their conservatory which is four



metres square and forms an extension of their principal living area. The extension next door would block their light and deny them direct sunlight in the later part of the day. They objected to loss of their privacy from side windows in the extension. They maintained that they had been given insufficient time to make representation and had been unable to view the relevant Local Plan at their local library. They requested refusal of the Application, rejection of the increased height of the roof, confinement of the attic extension to the boundaries of the existing property, and refusal of proposed side windows, full length windows and patio door to the front of the proposed upper extension.

33. In the annex to their complaint to the Ombudsman received on 28 March 2007 Mr C set out what he considered to be flaws in the assessment section of the report to the Committee and the reasons given for departing from published guidelines. He stated that the proposals would lead to unreasonable loss of privacy and natural light to neighbouring properties, that it would not be possible for the extension to integrate with the existing dwelling because original materials were no longer obtainable, that it was incorrect to refer to the single storey nature of the proposal and that no mention was made of the adverse effect of the proposals on Mrs M. Mr C pointed out that while he and his wife had offered access to allow a realistic appraisal they were not aware of any site visit having taken place.

34. With regard to reports to the Committee, the Council informed me that these are written to explain the decision making process. They do not repeat text contained in guidelines and policies at length but seek to explain their application. The Council's Director of City Development reviewed the report to the Committee. He pointed out that Mr C's disagreement with the application of policy and guidelines did not mean that the report to the Committee was erroneous. He did not accept Mr C's claim that there were errors. However, with the benefit of hindsight, he accepted that an area of confusion could have arisen in the first paragraph of the assessment which could have been made clearer with regard to the overall raising of the roof and the relationship of the extension to the new overall roof height. The Director of City Development considered that the Council had followed proper procedures, that the assessment was appropriate and that the Committee were able to take account of all the material considerations in arriving at their decision to approve the Application.

35. The Council informed me that guidance on the content of visits to sites by case officers is contained in the online procedures manual in the Council's intranet site where it is accessible to all staff. In this instance the site was visited and photographs were taken by Officer 1 on the morning of 3 April 2006.

*(d) Conclusion*

36. Mr C is wrong in his assumption that Officer 1 did not visit the site of the Application before considering her assessment of the proposals. She did visit and also took photographs. While Mr C has referred to errors of fact and obviously does not agree with the way policies and guidelines were applied or the reasons for departure, these do not in my view constitute errors which had a material influence on the decision to grant planning consent. The Council were entitled to exercise their discretion in deciding whether planning consent should be granted. I consider that they properly did so. I do not uphold this complaint.

37. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify her when the recommendation has been implemented.

**Explanation of abbreviations used**

Mr C	The complainant
The Application	The application received by the Council in March 2006 from the Architects
Mr N	Mr and Mrs C's neighbour who applied for planning consent
The Council	The City of Edinburgh Council
The Committee	The Development Quality Sub-Committee
Mrs C	Mr C's wife
Mrs N	Mr N's wife
The Architects	Mr and Mrs N's agents
Officer 1	The Council's planning case officer
Mrs M	Another neighbour who made representations
Officer 2	The Council's Head of Planning and Strategy
The Councillor	The local councillor
Officer 3	The Council's Acting Group Leader