

**Case 200603583: East Dunbartonshire Council**

**Summary of Investigation**

**Category**

Local government: Planning; Objection by neighbour to planning application

**Overview**

The complainant (Mr C) raised concerns in respect of his neighbour's application to East Dunbartonshire Council (the Council) to construct an extension at the gable of his house.

**Specific complaints and conclusions**

The complaints which have been investigated are that the Council:

- (a) failed to have regard to their Local Plan guidance on privacy and intervisibility of windows in granting planning consent to the application (*partially upheld*);
- (b) failed to take enforcement action to ensure that an upstairs en-suite bathroom window was provided with obscure glazing (*partially upheld*);  
and
- (c) delayed unduly in responding to Mr C's concerns (*upheld*).

**Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) apologise to Mr C for their shortcomings; and
- (ii) explore with Mr C and his neighbour the introduction of screening to preserve Mr C's privacy from overlooking from his neighbour's downstairs windows.

The Council have accepted the recommendations and will act on them accordingly. They have indicated with regard to (ii) that if that outcome can be achieved, the Council's Planning Service would, in the interests of customer relations, bear such reasonable costs as might arise.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) lives in a town in East Dunbartonshire. On 15 March 2006 his neighbours, whose detached house sits at a higher level, submitted a planning application to East Dunbartonshire Council (the Council) for consent to convert an integrated side garage to form a two storey extension to their home and to convert an existing conservatory to form a habitable apartment.

2. The complaints from Mr C which I have investigated are that the Council:
- (a) failed to have regard to their Local Plan guidance on privacy and intervisibility of windows in granting planning consent to the application;
  - (b) failed to take enforcement action to ensure that an upstairs en-suite bathroom window was provided with obscure glazing; and
  - (c) delayed unduly in responding to Mr C's concerns.

### **Investigation**

3. 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.

4. Mr C confirmed that he received notification of his neighbours' application. He did not avail himself of the opportunity to inspect his neighbours' plans as he was in hospital at the time.

5. The Council have informed me that their file records that, on receipt of the plans, the planning case officer (Officer 1) wrote to the neighbours on 21 April 2006 expressing concern about the lack of a 250mm setback at the front and a dropped ridgeline in the design. She requested revised proposals. These were received on 26 April 2006. On that day, Officer 1 completed a delegated assessment report, which she passed to the Senior Planner (Officer 2). Officer 1's report commented on privacy/overlooking issues. She stated that side windows were 'ok due to the difference in levels' and that in relation to daylighting/overshadowing there was 'no significant adverse impact'. She also considered existing fencing was sufficient and that there was no need to include a condition in the consent in this regard. Officer 2 noted that there

were no objections received from neighbours and approved the application on 27 April 2006. Conditional planning consent was granted by the Council on 2 May 2006. Neither of the two conditions attached to the consent referred to screening or privacy. The Council have confirmed that the plans approved as part of the consent showed obscure glazing being used in the first floor window.

6. When works commenced, Mr C was horrified to find that the side elevation of the extension contained a window into a new kitchen affording anyone using that room the opportunity, because of the height differential, to look directly into his sitting room. Mr C calculated that his neighbour's downstairs windows and his own sitting room windows are 10.05 metres (33 feet) distant at an angle of 85 to 90 degrees. Mr C discussed the matter with Officer 1 on 20 November 2006. Officer 1's case notes record that Mr C stated that he had not previously seen the plans and that he was concerned about overlooking of his property from the upstairs en-suite bathroom window and the downstairs utility room and kitchen windows. Officer 1 informed Mr C that a decision had been made on the application and that there was no provision for a third party right of appeal. Officer 1 did not consider Mr C's comments amounted to a formal complaint and no note was, therefore, made in the Planning Service complaints database.

7. Mr C approached the local councillor (Councillor A). Councillor A wrote to the Head of Partnership and Planning on 23 November 2006 and referred to page 119 of the Local Plan Guidance Notes on 'Daylight and the Intervisibility of Windows' (the Guidance Note) (see Annex 2). Councillor A stated that he considered the next door extension did not conform. This letter was passed to Officer 2 for reply by 11 December 2006.

8. On 31 December 2006, Mr C emailed the Chief Executive expressing concern that there had been no reply to Councillor A's letter. He claimed that Local Plan guidance had been breached on grounds of loss of privacy from the new windows looking directly into his windows and garden ground (especially as plain glass had been installed in the upstairs en-suite bathroom window). Additionally, the intervisibility of existing windows in Mr C's house and the new windows on his neighbour's extension fell well short of 18 metres. There is no record that this email was forwarded to the Planning Service.

9. Following a reminder of 5 January 2007 from Councillor A, Officer 2 replied on 26 January 2007. Officer 2 stated that Officer 1, who had left the

Council's employment in December 2006, had visited the site and carried out a detailed inspection before consent was granted. She had also met with Mr C after consent had been granted to discuss his concerns at overlooking from the side elevation windows (an upstairs en-suite bathroom and downstairs utility room and kitchen). Officer 2 stated that Mr C had been advised by Officer 1 that neither bathrooms nor utility rooms raised issues in terms of the Guidance Notes but under Building Standards regulations, the bathroom window required to be of obscure glazing. The kitchen window, which served the working rather than dining area of the kitchen, had been assessed in detail by Officer 1. She had been of the opinion, because of the difference in ground levels between the properties and since the windows were angled towards one another, that the window position did not warrant refusal of the application. Officer 2 further stated that Officer 1 had previously advised Mr C that a decision had been taken on the application, that there was no third party right of appeal, but that Mr C could pursue the matter through the Council's complaints procedure and ultimately to the Ombudsman.

10. The reply of 26 January 2007 was received by Councillor A on 2 February 2007 and passed on to Mr C.

11. By that time, having had no reply to his email of 31 December 2006, Mr C emailed the Chief Executive again on 18 January 2007. This elicited a response on 19 January 2007 that Mr C's correspondence had been passed to the Corporate Director, Environment (the Director) for reply. Despite a reminder from Mr C to the Chief Executive on 5 February 2007, no reply had been received by 20 February 2007 when Mr C first submitted his complaint to the Ombudsman's office.

12. On 12 April 2007, the Director wrote to Mr C, apologising for the delay in completing the Council's complaints process. He stated that he had reviewed Officer 2's letter of 26 January 2007. He considered it reasonable and accurately reflected the Council's position. The Director was unable to offer any further options for the resolution of Mr C's complaint and he provided contact details for the Ombudsman.

13. In response to my enquiry of the Council with regard to Officer 2's statement at paragraph 9, the Council's Building Standards Manager (Officer 3) informed me that a building warrant was granted to Mr C's neighbour on 18 September 2006 and an amendment, on matters not related to the

complaint, was granted on 5 February 2007. No request for a certificate of completion had been made. Officer 3 confirmed that the Building (Scotland) Regulations 2004 contain no standard relating to privacy and no regulation requires translucent glazing of the upstairs en-suite bathroom window. The drawing with the building warrant application, however, indicated the proposed provision of opaque glass to the upstairs en-suite bathroom window. Officer 3 considered that the lack of provision of opaque glass would not be a consideration in whether the Building Standards Service, as verifier, accepted in due course the completion certificate.

14. Officer 3 considered that no enforcement action can be taken under section 27 of the Building (Scotland) Act 2003 in respect of the window not having been provided with obscure glass. This is because it did not relate (a) to a building regulation requirement; (b) to work for which a building warrant is required and is being or has been carried out without a building warrant; or (c) to work for which a building warrant has been granted and is being or has been carried out otherwise in accordance with the building warrant.

**(a) The Council failed to have regard to their Local Plan guidance on privacy and intervisibility of windows in granting planning consent to the application**

15. The Council informed me that the planning process does not guarantee complete avoidance of overlooking to householders but attempts to ensure an acceptable level of privacy and that it has been their practice to apply this particularly carefully to more sensitive rooms such as bedrooms. In this instance they did not consider that they had failed to have regard either to Local Plan guidance or to their responsibilities to interested parties in the planning process. Section (b) of the Guidance Notes (Annex 2) required that individual circumstances be assessed. It was Officer 1's professional opinion that the difference in levels between the two houses was a material consideration and that a lesser spacing was acceptable in the particular instance.

*(a) Conclusion*

16. The relevant part of the Guidance Note is reprinted in Annex 2 to this report. It is clear from this that windows in an extension can be situated closer than 18 metres from the windows in a neighbouring property if they are on different levels and/or are set at an angle. I note the Council's view that the Guidance Note was taken into account by Officer 1, and that she exercised her professional judgement to recommend approval. Officer 1's assessment of the

proposals was, however, that there were no privacy/overlooking issues, and that the side windows were acceptable due to differences in levels between the applicant's and Mr C's property. Further she considered that the existing fence was sufficient, and she felt no condition was necessary to protect privacy and to avoid overlooking.

17. The guidance is not binding on the Council but it reflects the standards which if complied with, would normally result in the Council granting approval. The corollary would then be that a supportable argument should be made for granting consent where the guidelines are not satisfied. I would accept that Officer 1 would have exercised her professional judgement correctly had she noted that there could be, or were, privacy/overlooking issues and then demonstrated that in the particular circumstances these could be overcome because of the height differential. Instead, however, she not only stated that there were none but then recorded her opinion that the curtailed distance was 'OK due to the difference in levels'. In reaching a decision, I have to be careful that I do not substitute my opinion for that of the case officer. The issue in this case is finely balanced and the evidence following construction is that there is a significant problem of detriment to Mr C's privacy from overlooking. My view is that the assessment of the application by Officer 1 does not demonstrate the grounds for departing from the Guidance Note in reaching a decision to grant consent. Both Mr C and Councillor A were of the view that the Guidance Note had not been complied with and pointed this out specifically to the Council. Subsequent correspondence, in my view, failed to articulate the Council's contention that regard was had to the Guidance Note, that the distance between windows was not in conformity with the guidance, and that the application nevertheless warranted approval without a condition aimed at protecting privacy. The position the Council adopted prior to the investigation, was that the consent had been validly issued. That was the case, but Mr C was left with a problem of overlooking from his neighbours. On balance, I partially uphold the complaint to the extent that Officer 1 did not demonstrate the grounds for departing from the Council Guidance Note on intervisibility of windows.

*(a) Recommendation*

18. The Ombudsman recommended that the Council apologise to Mr C and review the issue of privacy/overlooking and, if considered necessary, negotiate with Mr C and his neighbour to have screening introduced to preserve Mr C's privacy. In response, the Council offered to discuss with Mr C and his neighbour whether an acceptable form of screen fencing, trellis or planting

might resolve matters. If that outcome could be achieved, the Council's Planning Service would, in the interests of customer relations, bear such reasonable costs as might arise.

**(b) The Council failed to take enforcement action to ensure that an upstairs en-suite bathroom window was provided with obscure glazing**

19. The Council accepted that Officer 2's belief that the Building Standard Regulations required obscure glazing in the upstairs en-suite bathroom window was incorrect. They stated that Officer 2, who has since left the Council's employment appears to have raised this issue in her reply to Councillor A (paragraph 9) in the belief that it was a more effective means of dealing with the use of clear glazing than the planning enforcement process. The approved plans for the planning application, in fact indicated the use of obscure glazing. The Council informed me that opaque glazing was installed in the upstairs window in early 2007 and they did not consider enforcement action was necessary.

*(b) Conclusion*

20. The Council's Planning Service, in responding to Councillor A on 26 January 2007, not only wrongly stated that the upstairs en-suite bathroom window, under Building Standards regulations, required to have obscure glazing, but also failed to state that the approved plans required obscure glazing for the particular window. I note that the Council consider that the requirement in the approved plans has been complied with. In light of the faulty information provided to the councillor, I partially uphold the complaint.

**(c) The Council delayed unduly in responding to Mr C's concerns**

21. The Council unreservedly accepted that there was undue delay in dealing with Mr C's concerns. An apology had been tendered in Officer 2's letter of 31 January 2007 for the delay of nine weeks in responding. The Council informed me that a significant contributory factor was the exceptional workload within the Planning Service over the period. They instanced a number of projects placing great demands on the Planning Service which were exacerbated by a vacancy for part of the time at Corporate Director level, redistribution of work and the bedding in period following the Director's appointment.

22. The Council stated that they will continue to exercise vigilance in addressing complaints within a reasonable timescale.

*(c) Conclusion*

23. I uphold this complaint. The Ombudsman considers that the apologies already offered by the Council and their stated intention to avoid recurrence, does not require further action by them in respect of this complaint.

24. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.



**Explanation of abbreviations used**

Mr C	The complainant
The Council	East Dunbartonshire Council
Officer 1	The planning case officer
Officer 2	The Senior Planner
Councillor A	The local councillor
The Director	The Corporate Director, Environment
Officer 3	The Building Standards Manager
The Guidance Note	A guidance note providing additional guidance in connection with the East Dunbartonshire Local Plan

### East Dunbartonshire Local Plan guidance note 3 Daylight and Intervisibility of Windows

#### INTRODUCTION

1. In the exercise of its development quality functions the Council will seek to ensure that good standards of daylighting and privacy are established and maintained in and around residential development.

#### GUIDANCE:-

2. In consideration of planning applications:-

- a) the Council will carefully examine the implications of development proposals to ensure that a reasonable measure of daylight reaches the windows of residential properties and that the appropriate light levels are available in garden areas; and
- b) the proposed development should conform generally to the guidelines for intervisibility of windows between adjacent residential properties, as shown in the table below and illustrated overleaf. Each set of circumstances will be looked at individually to assess the fitness of the relevant guideline distance, which may be reduced or increased as deemed necessary by the Council.

		Angle at window of house/extension etc to be erected not more than									
Angle degrees		90	80	70	60	50	40	30	20	10	0
Angle at window of any other house not more than	90	18m	18m	18m	18m	13m	9m	6m	4m	3m	2m
	80	18m	18m	18m	13m	9m	6m	4m	3m	2m	-
	70	18m	18m	13m	9m	6m	4m	3m	2m	-	-
	60	18m	13m	9m	6m	4m	3m	2m	-	-	-
	50	13m	9m	6m	4m	3m	2m	-	-	-	-
	40	9m	6m	4m	3m	2m	-	-	-	-	-
	30	6m	4m	3m	2m	-	-	-	-	-	-
	20	4m	3m	2m	-	-	-	-	-	-	-
	10	3m	2m	-	-	-	-	-	-	-	-
	0	2m	-	-	-	-	-	-	-	-	-

**NOTES** 'Angle' means the horizontal angle included between:

- a) the shortest line joining any part of one window opening to any part of the other; and
- b) the vertical plane of the opening of the window.

**Figure 1**  
**Examples of Minimum Window to Window Distances**

