

Scottish Parliament Region: Mid Scotland and Fife

Case 200600058: Fife Council

Summary of Investigation

Category

Local government: Planning; Policy; complaint by objector

Overview

The complainant, Mr C, raised a number of concerns against Fife Council (the Council), that the Council had not correctly handled a planning application (the Application) submitted by a third party, for the erection of dwelling houses and flats.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) councillors were not informed of the facts connected to the Application (*not upheld*);
- (b) potential problems were brought to the attention of Council officials in 46 letters of objection, however, these objections did not appear to have been brought to the attention of councillors (*not upheld*); and
- (c) access problems for vehicles, including refuse and emergency vehicles, were not properly considered (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. The Ombudsman received a complaint from Mr C that Fife Council (the Council) had incorrectly handled a planning application (the Application) submitted by a third party, for the erection of dwelling houses and flats. Thereafter, the Council had approved the Application and awarded full planning permission for the development. In Mr C's view, the Council's decision was wrong; they had mishandled the Application and made their decision without being informed of 'material facts'.

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

- (a) councillors were not informed of the facts connected to the Application;
- (b) potential problems were brought to the attention of Council officials in 46 letters of objection, however, these objections did not appear to have been brought to the attention of councillors; and
- (c) access problems for vehicles, including refuse and emergency vehicles, were not properly considered.

Investigation

3. The investigation of this complaint involved obtaining and reading all relevant documentation, including correspondence between Mr C and the Council. I have also reviewed the Report to Committee dated 24 January 2006 - the Erection of Flats and Dwelling Houses (Report 1), the Report to Committee dated 24 January 2006 - Listing Building Consent for Demolition of Listed Building (Report 2), Report to Committee dated 13 June 2006 (Report 3) and Transportation Services Consultation documents. I wrote to the Council on 28 August 2007 and received their reply on 15 November 2007.

4. 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.

(a) Councillors were not informed of the facts connected to the Application

5. Mr C stated that, on 23 January 2006, only four out of 21 councillors inspected the site of the proposed development and most who voted to grant planning permission were unfamiliar with the site. According to Mr C, 'had more

Councillors attended, they would have seen the problems which will be created' by their granting of approval for the development.

6. In their reply to my enquiries the Council stated that the purpose of a site visit was simply a fact-finding visit. It was not an opportunity for the councillors (or Council employees) to discuss matters or engage in conversation with objectors, local community organisations or the applicant or land owner. Furthermore, 'There is no requirement for a quorum for attendance at the site visit' (see paragraph 3).

7. The Council also explained that, following the site visit, a detailed report of the relevant facts of the case (which included the background to the Application, a planning assessment of the proposal and recommendations) was presented at a subsequent meeting of the Council's Central Area Development Committee (the Committee) (see paragraph 3).

8. In the Council's view '[the Committee] were familiar with the area and this may be one of the reasons for the lack of attendance by a number of [the Committee] members'.

9. I comment that it is generally accepted that councillors can form their own views, discuss detailed concerns with case officers and visit sites in their own time as they see fit before voting on planning proposals.

(a) Conclusion

10. According to Mr C, as only four out of 21 councillors inspected the site of the proposed development on 23 January 2006 and as some councillors were unfamiliar with the site, councillors were not informed of the facts connected to the Application. Mr C implied that, due to these circumstances, the councillors' decision on 24 January 2006 to approve the Application was not an informed decision (see paragraph 5).

11. I consider it reasonable that not all councillors were able to attend the site visit, which may or may not have been due to other commitments. Furthermore, it is not possible to determine the benefits of attending a site visit for individual councillors who may or may not have been familiar with the site. The attendance of councillors at site visits prior to determining planning applications is not mandatory. In addition, councillors can form their own views, discuss detailed concerns with case officers and visit sites in their own time as they see

fit before voting. Accordingly, having taken all these issues into account, I do not uphold this complaint.

(a) Recommendation

12. The Ombudsman has no recommendations to make.

(b) Potential problems were brought to the attention of Council officials in 46 letters of objection, however, these objections did not appear to have been brought to the attention of councillors

13. According to Mr C, 46 letters were received by the Council detailing objections to the proposed development but 'they do not seem to have been brought to the attention of Councillors'.

14. In their reply to me, the Council stated that a summary and assessment of the letters of objection they received against the Application were included within written reports to the Committee. Furthermore, copies of the objection letters were also available for inspection by the Committee members at Committee meetings (see paragraphs 3 and 7).

15. Within Report 1 it was recorded: 'Representations - 46 letters of objection were received from 3rd parties concerned about ...' Thereafter were listed 54 issues, commencing with the entry 'Contrary to Development Plan' to the final entry 'Loss of existing vehicular access' (see paragraph 3).

16. Report 1 also recorded the statutory policies and approved guidance the Committee had considered before it reached its decision about the Application.

17. For example, within sections 3.5 and 3.5.1 of the Planning Summary of Report 1 it was recorded: 'Representations received - The Local member [the Councillor], the Community Council and 3rd parties have objected to the proposals. Their reasons are incorporated into the list at the front page of this report.' Section 3.5.2 summarised the rationale leading to the decisions taken about the listed objections (see paragraph 14).

18. Thereafter, section 4 concluded that, subject to the listed conditions and reasons, the development was recommended for approval.

19. Within Report 2, which dealt with the listed building element, it was recorded that 44 letters of objection were received from third parties (see paragraphs 3 and 13).

20. In reaching a decision, the Committee had considered the National Planning Policy Guideline - Planning and the Historic Environment and thereafter, at section 3.4, the Development Plan, section 3.4.1 the Structure Plan and the Local Plan and within section 3.5.1 had recorded the result of the Council's contacts with Historic Scotland.

21. Report 2 concluded that the proposal satisfied Government Guidance and 'given this is not contrary to the provision of the adopted Local Plan it is recommended for approval'. However, although it was recorded that Historic Scotland accepted the principal of demolition, they were not satisfied that the replacement residential scheme was acceptable.

22. Thereafter, on 13 June 2006 the Committee held a meeting to consider Historic Scotland's concerns. At this meeting, the Committee ratified their decisions to approve the Application for the re-development of the site (see paragraph 3, reference Report 3).

(b) Conclusion

23. In Mr C's view, it appeared that the letters of objection to the Application had not been made available to the councillors (see paragraph 1). According to the Council, the letters of objection were made available to the councillors and Committee members (see paragraphs 13 and 14). Within my review of all the submitted paperwork including Report 1 and Report 2, I have seen that the Council recorded and considered the concerns raised by the 46 and 44 letters of objection respectively within their decision making process and prior to their decisions being made (see paragraphs 13 to 19 inclusive). Accordingly, I do not uphold this complaint.

(b) Recommendation

24. The Ombudsman has no recommendations to make.

(c) Access problems for vehicles, including refuse and emergency vehicles, were not properly considered

25. According to Mr C, the formation of 19 additional houses will create access problems, as the lane to the development allows for only single access.

In addition, Mr C stated that the views of the Waste Management Section of the Environmental Department did not appear to have been included in the information which was provided to councillors and, furthermore, 'the access and parking arrangements are in breach of Transportation and Development Guidelines'. Mr C also raised his concerns regarding the development about the potential for risk to pedestrians and that problems may ensue such as water-ponding.

26. In their response to me, the Council acknowledged that there was a flaw in the consultation process between the Council's Development Services and Environmental Services. This had been identified during the processing of the Application. 'It became apparent that [the Council's] Waste Services was not consulted and the corporate view of Environmental Services was not being obtained during the processing of [the Application].

27. The Council explained that they have now corrected this with Development Services, who have been requested to consult with Environmental Services Waste Management Section during the processing of planning applications for housing and other developments which will require waste uplifts.

28. When the flaw in the consultation process was identified (see paragraph 26), the Council told me that case officers had held discussions with Environmental Services and arranged for a waste service vehicle to be in attendance during the Committee site visit on 23 January 2006. Case officers had also discussed the problems which had been experienced in the past in accessing and exiting the site when the previous business was in operation there.

29. According to the Council:

'Members of the Committee who attended the site visit observed the difficulties which the waste truck had in accessing and egressing the site and the congestion which it caused. [The Councillor], who objected to [the Application], also witnessed these manoeuvres and the traffic implications. Thereafter, although she was not a member of the Committee, [the Councillor] took the opportunity to address the Committee, advising members of the perceived problems with the proposed development. The Committee report, along with the Case Officer's briefing, [the Councillor]'s

observations, and what was observed by the Committee site visit, allowed a decision to be made by the Committee in the full knowledge of the facts.'

(see paragraphs 5 and 6).

30. In their reply to me, the Council stated that Transportation Services were consulted during the processing of the Application and were requested to assess the road safety and parking implications of the proposed development. Thereafter, 'Having taken into account all relevant issues they recommended approval of planning permission, subject to the imposition of conditions' (see paragraph 3).

31. The Council added that Transportation Services recognised that the access lane was substandard when they had reached their decision to recommend approval for the Application. However they explained that, given the existing situation on site, whereby the access lane served the previous business use and existing properties, it would have been difficult for Transportation Services to recommend refusal of planning permission, particularly in circumstances 'where intensification of use would be lessened by the proposed residential development and also given the circumstances where there was a previous planning permission granted for a car park which would equate to a similar amount of car parking spaces to that required by the proposed development'. The car parking is in accordance with transportation guidelines.

32. Regarding concerns about pedestrian safety, the Council stated that Transportation Services had considered these. Furthermore, planning conditions were imposed on planning permission, to ensure for the provision of traffic management measures and safe pedestrian access.

'In particular, the conditions require details of a raised junction table on [Place X], to be submitted for the written approval of this planning authority and the approved works to be implemented before occupation of any residential unit. Potential for ponding will be assessed in the consideration of the design details and when the raised table junction is installed. The design of this traffic calming measure and roads drainage will also be assessed by [the Council] in the Roads Construction Consent that is required under the Roads Scotland Act.'

33. I considered the 54 listed objections within Report 1 and Report 2 and noted that these included the following: 'substandard access road, access road unable to cope with additional traffic, road too narrow, inadequate parking provision, emergency / services vehicular access, surface water drainage concerns and danger to pedestrians'. The Committee addressed these issues in reaching their decision and in section 3.5.2 of Report 1 as follows: 'Transportation Services have not objected to the proposals and subject to the imposition of conditions this would address the objections regarding access, visibility, parking and road safety in general' (see paragraph 29).

(c) Conclusion

34. In Mr C's view, it appeared that the access problems for vehicles including refuse and emergency vehicles were not properly considered. Although the Council have acknowledged that initially their consultation process with Development and Environmental Services was flawed, this was addressed when the failure was identified (see paragraph 26). Within my review of Report 1 and Report 2, these issues were listed from the letters of objection the Council had received and addressed by the Committee before their decision to approve the Application was reached (see paragraphs 20 and 33). Furthermore, from the documentation I have seen, the difficulties encountered by larger vehicles accessing and exiting the site were viewed and debated prior to planning approval being granted (see paragraph 29).

35. Likewise, from the documentation I have seen, the Council has considered and will continue to consider as work in progress, the potential for risk to pedestrians and the potential for risk caused by water-ponding (see paragraph 32). Having taken all these issues into account, I do not uphold this complaint.

(c) Recommendation

36. The Ombudsman has no recommendations to make.

Explanation of abbreviations used

Mr C	The complainant
The Council	Fife Council
The Application	The planning application submitted by a third party for the development of dwelling houses and flats. This involved the demolition of a listed building
Report 1	The Report to Committee dated 24 January 2006 – the Erection of Flats and Dwelling Houses
Report 2	The Report to Committee dated 24 January 2006 Listing Building consent for Demolition of Listed Building
Report 3	The Report to Committee dated 13 June 2006 ratifying decision about listed building re-development
The Committee	The Council's Central Area Development Committee
The Councillor	The councillor who objected to the Application
Place X	The location of the raised junction table

Glossary of terms

ponding

Recessing of the surface

raised junction table

Large flat top humps which cover an entire junction kerb to kerb, usually extending a few metres into the side road(s)