

Case 200603125: South Lanarkshire Council

Summary of Investigation

Category

Local government: Planning

Overview

The complainant (Mr C) raised a number of concerns about South Lanarkshire Council (the Council)'s handling of his enquiries regarding outline planning permission for construction of a one bedroom single storey dwelling on his land adjacent to his home. Mr C also complained that the Council had failed to correctly process a planning application by a neighbour (Mr N), to Mr C's detriment.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) gave Mr C incorrect or misleading advice regarding his initial enquiries about an application for outline planning permission to build a one bedroom single storey dwelling adjacent to his property (*not upheld*);
- (b) gave incorrect status to Mr N's planning application, to Mr C's detriment (*not upheld*);
- (c) failed to deal with Mr C's initial planning enquiries within the correct timescales (*partially upheld*); and
- (d) failed to address the specific points in Mr C's letters and emails of complaint (*partially upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) apologise to Mr C for failing to deal with his enquiry in accordance with Council guidance and provide feedback to the staff involved in this case on the timescales contained in the guidance; and
- (ii) apologise to Mr C for failing to adequately address all issues raised in his complaints.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. On 8 February 2007 the complainant (Mr C) contacted the Ombudsman's office regarding a planning complaint against South Lanarkshire Council (the Council). Mr C explained that in July 2006 he had contacted the Council to seek advice on the likely success of his submitting an application for outline planning permission to construct a one bedroom single storey dwelling on his land adjacent to his home. Mr C said he had been advised by the Council that his proposal would not comply with planning policy as only three dwelling houses were allowed in that area and his application would constitute a fourth dwelling. Mr C later discovered that a neighbour (Mr N) had subsequently received outline planning permission to build a dwelling house adjacent to his home. Mr C complained that the Council had either allowed Mr N planning permission in breach of their own guidelines or they had deliberately given Mr C false information in order to favour Mr N. In addition Mr C complained that the Council had repeatedly failed to answer his question regarding their handling of his planning enquiry. Mr C complained that, due to the Council's actions, he was now unable to build the property which was intended to be a dwelling for his elderly, disabled mother.

2. The complaints from Mr C which I have investigated are that the Council:
- (a) gave Mr C incorrect or misleading advice regarding his initial enquiries about an application for outline planning permission to build a one bedroom single storey dwelling adjacent to his property;
 - (b) gave incorrect status to Mr N's planning application, to Mr C's detriment;
 - (c) failed to deal with Mr C's initial planning enquiries within the correct timescales; and
 - (d) failed to address the specific points in Mr C's letters and emails of complaint.

Investigation

3. My investigation of this complaint involved reviewing the documentation provided by Mr C, making detailed enquiries of the Council and assessing their responses and documentation provided and making an enquiry of Mr C. The documentation provided by the Council included copies of their complaints procedure operational at the time: 'Enterprise Resources – Customer Care Strategy Complaints' (the Complaints Procedure); the Council's guidance on dealing with customer enquiries (the Guidance) ; 'Planning Advice Note (PAN)

40 (revised): Development Control' (PAN 40); 'South Lanarkshire Council Enterprise Resources Planning and Building Standards Information Leaflet No. 12 – pre-application discussions' (the Leaflet); 'South Lanarkshire Council Enterprise Resources – A Guide to the Planning Application Decision-Making Process'; and Policy 73 of the Adopted Upper Clydesdale Local Plan (Policy 73).

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.

History of Complaint

5. Mr C advised that on 25 July 2006 he telephoned the Council and spoke to a planning officer (Officer 1) regarding his proposal to submit an application for outline planning permission for a one bedroom single storey dwelling on his land adjacent to his bungalow. He said Officer 1 advised him that Council policies stated that a maximum of three dwellings were permitted in his area. Mr C said Officer 1 explained that she considered there to be three new dwellings already: Mr C's and Mr N's properties and outline planning permission granted to another applicant, Mr E, to build a property in the area. Mr C said Officer 1 explained that Mr N's property counted towards the threshold of three new properties as it had been very significantly altered and enlarged and suggested he write in for confirmation of the Council's position.

6. Mr C explained that he felt Officer 1 had seemed a little uncertain with her advice and said it had differed from previous advice he had received from the Council. Mr C said he thought it best to get something in writing in case other developments were planned by other landowners in the future. So later that day, 25 July, he wrote to Officer 1, seeking written clarification on whether the Council would 'consider an application in view of the policies of the Council and the outline planning permission already granted [to Mr E] to build adjacent and north of [Mr C]'s existing property'. The Council received this letter on 26 July 2006.

7. On 4 August 2006, having received no response, Mr C sent a fax to Officer 1 regarding his enquiry, enclosing a further copy of his letter of 25 July. The Council have advised me that they received the fax. Mr C said that he telephoned the Council on the 7 August 2006 to enquire about the progress of his enquiry but did not receive a response. On 14 August 2006 Mr C emailed

the Council regarding his ongoing communications stating 'I have not received a reply to my enquiry and as this matter is very urgent would be grateful if a reply could be emailed by return. On 19 August, having received no response, Mr C again emailed the Council noting 'this matter is very urgent and the lack of response is not acceptable'.

8. On 18 August the Area Planning Manager (Officer 2) responded to Mr C's enquiry. He explained 'As you may be aware the proposed site is located in the Remoter Rural Area and Scenic Areas where Policy 73 and Policy 76 of the Upper Clydesdale Local Plan apply. Policy 73 states that there shall be a presumption in favour of new, small scale developments of up to 3 houses although proposals which would lead to ribbon development, an extension of a settlement or which by virtue of their scale or style threaten to change the established character of the existing development shall be resisted'. He advised '[Policy 73] further states that the maximum number of units permissible will depend upon the existing development form but in any case shall not exceed three'. He explained to Mr C that as he proposed to erect a dwelling house in an area where '2 new dwellings have already been erected, and a current application for the erection of a dwelling has been submitted' his proposal did not comply with Policy 73 'as it would constitute a fourth new dwelling house in an area where only 3 new dwellings are allowed'. He went on to provide further reasons on why the proposal would not comply with planning policy. He said that he hoped that the information in the letter explained the Council's position but invited Mr C to contact the planning office should he require further clarification. He added 'Please note this advice is given without prejudice to the outcome of any future planning application for this site'.

9. As a result of this letter, Mr C said he concluded that his application for outline planning permission would be unsuccessful and, therefore, he did not ask for further clarification or submit an application to the Council.

10. On 2 September 2006 Mr C received a neighbour notification notice from an owner of a neighbouring property, Mr N, regarding an application for planning permission for Mr N to erect a dwelling house adjacent to his home. Mr C duly submitted an objection to this development to the Council on the grounds that it would 'constitute a fourth new dwelling house in an area where only 3 new dwellings are allowed'.

11. On 8 November 2006 Mr C received a letter from the Council explaining that the application by Mr N had been granted outline planning permission for the proposed development.

12. As a result of this, Mr C sent a number of emails to the Council over the following weeks seeking an explanation for the Council's reasoning behind their approval of Mr N's proposed development. In his response of 13 November 2006, Officer 2 explained that at the time of Mr C's initial enquiry dated 26 July 2006, planning consent had been granted for two houses, namely the house in which Mr C resided and outline planning permission to a neighbour, Mr E, for an area of land directly to the north of Mr C's property in November 2005. He said that in addition, the application which had recently been granted was submitted by Mr N on 27 July 2006. He explained that Mr C had been advised that his application would have been unlikely to be granted as it would have constituted a fourth house at the site, assuming that Mr N's application was granted. He added that when Mr N's application was assessed it was considered that it would comply with planning policy as it constituted the 'third new house' at that location. He noted that Mr C had failed to submit a planning application for his proposal and so any future development at that location could not be taken into account.

13. Mr C continued to pursue matters with the Council and, in particular, sought clarification on which dwellings constituted the 'three new dwellings'. Mr C said he wished to know why the Council were now saying that Mr N's home did not count towards the threshold of three new dwellings when he had been advised by Officer 1 that it did. He pointed out that the Council's letter of 18 August 2006 stated that two new dwellings had 'already been erected' and that the only two properties which were 'erected' were his home and Mr N's home. Mr C also sought an explanation of why the Council accepted Mr N's application on 27 July 2006 when neighbour notification was not carried out until 1 September 2006.

14. In their response to Mr C's first point, the Council said that Officer 1 had no recollection of giving Mr C such advice. They added that Mr N's home, a refurbished and extended building, did not, in their view, count against the threshold of three new dwellings referred to in the local plan. In response to Mr C's second point, the Council explained 'Mr N's application was not accepted as valid on 27 July 2006, due to a number of defects, including incorrectly served neighbour notification. In line with normal practice the application was

invalidated, ie held but not registered as a valid application, pending the resolution of these defects. These were subsequently resolved and the application was registered on 4 September [2006]'.

15. Mr C continued to pursue matters and in a letter dated 10 December 2006 pointed out that if he had been given 'correct information' on 25 July 2006 he would have made an application for outline planning permission on 26 July and would, therefore, in his view, have had a valid application submitted before Mr N. He also explained that, in his view, if he had been given 'correct information' in the letter from the Council dated 18 August 2006 he could still have made a valid application before Mr N, as Mr N did not serve neighbour notification until 1 September 2006.

16. The Council duly responded, explaining 'at the time of your initial enquiry of 26 July 2006, planning consent had been granted for 2 new houses, the first being [Mr C]'s; the second being outline permission granted to [Mr E] for an area of land directly to the north of [Mr C's home] in November 2005 ... In addition, pre-application discussions were underway in relation to the application which has recently been granted ..., which was formally submitted by [Mr N] on 27 July 2006'.

17. Mr C remained dissatisfied with the Council's response and asked for further explanations. On 10 January 2007, the Council explained 'With regard to the pre-application discussions with [Mr N], I would advise that these had been ongoing since late 2005, when a previous application by [Mr N] was withdrawn to resolve access issues, and continued, in a positive manner, up to the point he lodged his planning application on 27 July 2006. Since 2 houses were already consented [Mr C's home and Mr E's application], and given the background to [Mr N]'s proposal set out above, I think it is entirely reasonable to suggest that [Mr N]'s proposed house constituted a third dwelling, which was consistent with Policy 73 ... In such circumstances I think it would have been unfair of officers to encourage you to make an application for a fourth house, which would have been contrary to policy and therefore unlikely to succeed'.

18. The Council further explained that, on 18 August 2006, at the time of responding to Mr C's initial enquiry, they considered that the procedural discrepancies on Mr N's application would be easily resolved and that the application was likely to be validated in the near future, as was the case.

19. Mr C continued to pursue matters and on 25 January 2007 the Council noted that, in their view, a full explanation of the circumstances of the case had been provided to Mr C on a number of occasions. They explained 'Local plan policy allowed for 3 new houses and one was built, another was approved and a third had been subject of an application which was acceptable in principle but had been withdrawn to address issues of detail, in relation to which pre-application discussions were ongoing and a resolution was in sight. It is important to note that the advice given to you at the time was offered on an informal basis and you were at liberty then, as you are now, to submit an application for formal consideration'. The Council said 'whilst a stand-alone dwelling unrelated to your own house such as you have proposed would not be consistent with the local plan policy, there may be some scope for exploring the potential for a 'granny annexe' within your existing cartilage, legally tied to your existing dwelling'. Mr C did not submit a formal application or explore the Council's suggestion. In his comments on this report, Mr C explained that he did not understand there to be any time limit on him exploring these options.

(a) The Council gave Mr C incorrect or misleading advice regarding his initial enquiries about an application for outline planning permission to build a one bedroom single storey dwelling adjacent to his property

20. From the documentation on this complaint, it is clear that Mr C's and the Council's accounts of their telephone call of 25 July 2006 are at odds. The Council were asked to provide a copy of their record of this telephone call but said that they did not have such a record. As there is no means for me to establish whose version of events is correct, I have not considered the details of the call when weighing up the evidence in my investigation of this complaint.

21. In response to my enquiries, the Council explained that in their letter of 18 August 2006 their statement '2 new dwellings have already been erected' meant that two dwellings had been 'physically built'. They said one of the dwellings was Mr C's home and the other was planning permission which had been granted to Mr E in November 2005. They acknowledged that Mr E's 'house had not been erected at the time the letter was written and to that extent the response was inaccurate'. However they noted that Mr E's house would still have been counted against the threshold of '3 new dwellings' allowed for in terms of the local plan policy and to that extent the inaccuracy had no bearing on the validity of the advice given. The Council accepted that this may have been confusing for Mr C and said that the error was corrected in subsequent correspondence. In his comments on this report, Mr C stated that he felt the

Council's advice on the erected properties was not confusing, but was completely inaccurate.

22. The Council further explained that Mr N's home was not considered to be a 'new dwelling' for the purposes of Policy 73 as it was originally a small traditional cottage which was built before planning legislation came into force. They said it was subsequently extended and altered through a planning permission granted in 2002 to create the larger house which now occupies the site. They added 'in contrast, [Mr C]'s property ... was erected following the granting of planning permission in the 1980s. Due to its age, therefore, this property is considered a 'new' house in terms of determining whether the three house threshold has been reached'.

23. When questioned on the wording of the final sentence of their letter of 18 August 2006, the Council said that the phrase was attached to all pre-application advice letters and signified that informal advice only was being given. They explained 'a Council officer cannot commit the Council to taking a particular decision on any application prior to its submission'. They said the pre-application discussions allowed applicants to seek the Council's informal view of any potential proposals and to amend, abandon or proceed with the applications accordingly. They explained that the views expressed by the Council at that stage were not legally binding on the Council in terms of how it would determine any application submitted, nor did the applicant have to follow the advice given. They provided a copy of PAN 40 which explained the process in more detail. The Council also provided a copy of the Leaflet which stated 'Please note that any comments given at this early stage can only be advisory – only after an application is submitted, full consultation has taken place and the public given the opportunity to comment on the application, can your proposal be properly assessed and a decision made upon it'. The Council later confirmed that they had no record of whether Mr C had requested or had been sent the Leaflet. However, they said it was not their normal practice to send the Leaflet to the public in response to pre-application enquiries and it would be unlikely that it would have been sent in this case. They added that the public can obtain a copy of the Leaflet at the Council's One Stop Shops or access the information on the Council's website.

(a) Conclusion

24. The Council have accepted that the statement, '2 new dwellings have already been erected', contained in their letter to Mr C of 18 August 2006 was

inaccurate. However, the Council corrected their mistake in subsequent correspondence with Mr C.

25. The Council have explained why Mr N's home could not be considered to be one of the three dwellings in terms of Policy 73 and I accept their explanation.

26. Although the Council made an error in their initial letter to Mr C, the fact remains that their advice, that the three dwelling rule had already been met, was accurate and, in my view, the Council were right not to encourage Mr C to submit an application which was unlikely to succeed, although it would have been open to Mr C to submit an application. The Council have explained that the advice in their letter of 18 August 2005 was given on an 'informal basis' and that Mr C could have, but did not, submit a planning application. It is noted that, in their letter, the Council also invited Mr C to contact them should he require 'further clarification' of the Council's position, and that he did not do so. Further, in an attempt to assist Mr C in finding a solution to his accommodation problem, the Council put forward the suggestion of a 'granny annexe' being built within his existing curtilage, and they must be commended for doing so.

27. Although the Council made an error in their letter of 18 August 2005, the planning advice given to Mr C on his proposal was correct. Had Mr C chosen to submit a planning application, the outcome would likely have been the same. I, therefore, conclude that the Council did not give Mr C incorrect or misleading advice regarding his initial enquiries and I do not uphold this complaint.

(b) The Council gave incorrect status to Mr N's planning application, to Mr C's detriment

28. The Council explained that when a planning application is submitted to them they are required to check the validity of the application within two working days. Further information is requested if necessary and the application is held as invalid, or the application is registered if all necessary information is complete. The Council explained that they then have two months in which to determine the application, unless the applicant agrees to an extension to this.

29. In Mr N's case, they said that his first application was submitted on 31 August 2005. The application was deemed invalid and a letter issued on 2 September 2005 requesting further information. The application was subsequently registered on 7 October 2005 following receipt of the information

requested. Following receipt of a consultation response from Roads and Transport Services, the Council wrote to Mr N on 8 November 2005 advising him that he required to gain control over land within the sightlines at the access. The Council advised that any concerns relating to the suitability of the application in policy terms would have been raised at that point. They explained that Mr N was advised to amend the application form and plan accordingly or alternatively to withdraw the application if the former could not be achieved within 14 days. Following discussions, during which comfort was given regarding the acceptability of the principle of the proposed development, Mr N withdrew the application on 29 November 2005 with the intention of resolving the sightline control issue and re-submitting the application. The Council provided copies of their letter of 8 November 2005 and Mr N's letter of 29 November 2005 which verified their position.

30. The Council explained 'The second application was submitted on 27 July 2006. The application was invalid due to lack of information and the Council advised [Mr N] of this on 28 July 2006. The application was subsequently registered on 4 September 2006 following receipt of the necessary information. The application was then assessed and permission was granted under delegated powers on 2 November 2006. A letter of objection had been received from [Mr C] on 5 September 2006 and this was taken into account in the delegated report leading to the decision to grant planning permission'. The Council provided a copy of their letter of 28 July 2006 to Mr N detailing the notification issues which required to be addressed and a copy of Mr N's representative's letter, received on 4 September 2006, along with the new planning application form, which stated that the items in the Council's letter had been addressed and that Mr N had advised that the necessary improvements on the entrance to the access road had been completed.

31. In response to questioning on the priority given to Mr C's enquiries and Mr N's application, the Council explained 'for the purpose of establishing whether or not the allowance of up to 3 new dwellings in the local plan has been reached, any individual house would normally need to have the benefit of a valid planning permission [Mr E's] or be built [Mr C's home]. In this case, Mr N's proposal had been the subject of an application the previous year at which point the acceptability of the principle of the proposal had been established. The application was withdrawn to resolve one detailed issue'. The Council explained '[Mr N]'s application was received on 27 July 2006, while [Mr C]'s written enquiry was received a day earlier. [Mr C]'s enquiry was, therefore,

considered at a time when [Mr N]'s application had been received'. They said that Mr N had provided a letter with his application explaining that his access issue had been resolved. The Council provided a copy of the letter which confirmed this was the case. The Council considered 'It was entirely reasonable for officers to have taken the view that [Mr N]'s application required to be given higher status than [Mr C]'s informal pre-application enquiry. In any event, [Mr C] chose not to submit a formal application'. However, the Council added 'it is not considered that the submission of an application by [Mr C] would have altered the [Council's] position'.

(b) Conclusion

32. It is clear that at the time the Council considered Mr C's written enquiry they were also in receipt of a planning application from Mr N and a letter explaining that the outstanding sightlines issue had been addressed. Mr N had previously been in consultation with the Council regarding his proposed development for a three month period the previous year at the end of which he indicated his intention to progress matters. Although neighbour notification issues were outstanding on Mr N's July 2007 application, in light of their previous communications with Mr N and the work done by Mr N to comply with the Council's advice, it was reasonable for the Council to prioritise Mr N's application. I conclude that the Council did not give incorrect status to Mr N's planning application and, therefore, do not uphold this complaint.

(c) The Council failed to deal with Mr C's initial planning enquiries within the correct timescales

33. The Guidance states that correspondence should be acknowledged within two working days and, where circumstances allow, a full response issued within ten working days. It adds that, if it is not possible to issue a full response within this period, the customer must be contacted again, either in writing or by telephone, telling them when a full reply will be available. The Guidance explains that the above timescales are minimum standards for Council service provision.

34. The Council acknowledged that they took 18 working days in which to respond the Mr C's letter. By way of explanation, they said that they always endeavour to meet response times, however, this had to be balanced against other pressures within the service including determining planning applications within statutory timescales. They said that Mr C's letter was received at a time when there was a vacancy within the Planning Service in the area office and

there were absences within the team due to annual leave. The Council explained that, in those circumstances, a lower priority would have been placed on dealing with general enquiries such as Mr C's.

(c) Conclusion

35. I accept that, on occasion, Council resources may be strained and in this case the Council had genuine reasons for being unable to deal with Mr C's enquiry within the timescales specified in the Guidance. However, the Council failed to acknowledge receipt of Mr C's letter of enquiry within the two working days specified and failed to advise Mr C that they would be unable to issue a full response within the ten working day deadline. From the tone of his correspondence, it is evident that Mr C was becoming increasingly anxious about the lack of response from the Council and an acknowledgement letter and explanation for the delay may have helped alleviate some of this anxiety. In light of these administrative failings, I partially uphold this complaint, to the extent that the minimum standards for Council service provision contained in the Guidance were not fully adhered to in this case.

(c) Recommendations

36. The Ombudsman recommends that the Council apologise to Mr C for failing to deal with his enquiry in accordance with the Guidance and provide feedback to the staff involved in this case on the timescales contained in the guidance.

(d) The Council failed to address the specific points in Mr C's letters and emails of complaint

37. The Complaints Procedure states that conclusive responses to complaints should address all issues raised and explain the rationale of the decision and action taken.

38. When questioned on their apparent failure to address the two issues raised by Mr C in paragraph 13 above, the Council said they considered that the point relating to the definition of the three dwellings had been addressed when the Council referred Mr C back to their previous correspondence, which, in their view, made the composition of the three dwellings clear. The Council said they felt that subsequent correspondence also made this clear and that the reasons behind the decision were also explained. They did, however, acknowledge that they failed to identify which procedure had been followed for the prioritisation of planning enquiries, but confirmed that there was no formal procedure in that

respect. They explained 'the Head of Planning and Building Standards Services is aware of this difficulty and he intends to ensure that, in any future similar circumstances ie where there is no formal procedure in place, this is fully explained in initial correspondence'.

(d) Conclusions

39. It is clear from the correspondence in this case that although, having received Mr C's complaint, the Council clarified the composition of the 'three dwellings' they did not directly address Mr C's specific point about their use of the phrase 'two new dwellings have already been erected' in their letter of 18 August 2006. In their response to my enquiries (see paragraph 21 above) the Council admitted that Mr E's house had not been erected at the time of Mr C's complaint and that to that extent their response of 18 August 2006 had been inaccurate. However, in my view, they should have admitted this in their responses to Mr C's complaints.

40. In his communications with the Council, Mr C was clearly concerned about the prioritisation process which the Council had applied when considering his enquiry and Mr N's application and had, therefore, asked a number of specific questions on this subject. It is noted that the Council have acknowledged that they failed to advise Mr C that there was no formal procedure in place in this area and that they have taken steps to ensure that this does not happen in similar cases in the future.

41. Although I acknowledge that overall the Council did try to answer Mr C's questions and explain their rationale behind their decision-making, they failed to deal with the matters in paragraphs 39 and 40 adequately. I, therefore, partially uphold this complaint.

(d) Recommendation

42. The Ombudsman recommends that the Council apologise to Mr C for failing to adequately address all issues raised in his complaints.

43. 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	South Lanarkshire Council
Mr N	Mr C's neighbour
The Complaints Procedure	Enterprise Resources – Customer care Strategy Complaints
The Guidance	The Council's guidance on dealing with customer enquiries
PAN 40	Planning Advice Note (PAN) 40 (revised): Development Control
The Leaflet	South Lanarkshire Council Enterprise Resources Planning and Building Standards Information Leaflet No. 12 – pre-application discussions
Policy 73	Policy 73 of the Adopted Upper Clydesdale Local Plan
Officer 1	The Planning Officer
Mr E	Another planning applicant
Officer 2	The Area Planning Manager

List of legislation and policies considered

Enterprise Resources – Customer care Strategy Complaints

The Council's guidance on dealing with customer enquiries

Planning Advice Note (PAN) 40 (revised): Development Control

South Lanarkshire Council Enterprise Resources Planning and Building Standards Information Leaflet No. 12 – pre-application discussions

Policy 73 of the Adopted Upper Clydesdale Local Plan

South Lanarkshire Council Enterprise Resources – A Guide to the Planning Application Decision-Making Process