

Scottish Parliament Region: Highlands and Islands

Cases 200603584 & 200603889: The Highland Council

Summary of Investigation

Category

Local government: Planning

Overview

The complainants (Mr C and Mr B) raised a number of concerns about the way an outline planning application (the Application) for the Highland Housing Fair (the Fair) had been handled by The Highland Council (the Council).

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to engage in adequate consultation with Inverness South Community Council (ISCC) and guidelines for consultation were not followed (*not upheld*);
- (b) emails between Council officers, and Council officers and the applicant, show that the outcome of the Application was pre-judged (*not upheld*);
- (c) details of the Application did not appear in the Council's Weekly List (*not upheld*);
- (d) there was collusion in the planning process given that the applicant, Highland Housing Alliance (HHA), is funded by the Council (*not upheld*);
- (e) planning permission should not have been granted as the land was marked as Green Wedge (refers to land covered by Policy 41 of the Council's Local Plan) in the Inverness Local Plan (the Local Plan) (*not upheld*);
- (f) information (such as plot layout, house type and site analysis) which was available prior to the Inverness Area Planning Application Committee (the Committee) hearing on 30 January 2007 was not submitted to the Committee (*not upheld*);
- (g) the outcome of the Application was a foregone conclusion as shown by the fact that the Report to the Committee was dated 12 January 2007 (*not upheld*);
- (h) the Application inaccurately referred to the land in question as being vacant when it was in fact farmland (*not upheld*);

- (i) there should have been developer contributions for the site as there was no benefit to the community from the development (*not upheld*);
- (j) outline planning permission was granted prior to a report on road infrastructure being submitted by Transport Scotland (*not upheld*); and
- (k) a link road had not yet been built and the cap for housing was at 600 houses (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 15 February 2007, the Ombudsman received a complaint from a man, referred to in this report as Mr C, about the way an outline planning application (the Application) for the Highland Housing Fair (the Fair) had been handled by The Highland Council (the Council). Mr C's complaints are reflected in complaints (a) and (b) and (d) to (k) at paragraph 3 below.

2. On 23 February 2007, the Ombudsman received another complaint from a man, referred to in this report as Mr B, about the Application. Mr B's complaints are reflected in complaints (a), (b) and (c) at paragraph 3 below.¹

3. The complaints which I have investigated are that:

- (a) the Council failed to engage in adequate consultation with Inverness South Community Council (ISCC) and guidelines for consultation were not followed;
- (b) emails between Council officers, and Council officers and the applicant, show that the outcome of the Application was pre-judged;
- (c) details of the Application did not appear in the Council's Weekly List;
- (d) there was collusion in the planning process given that the applicant, Highland Housing Alliance (HHA), is funded by the Council;
- (e) planning permission should not have been granted as the land was marked as Green Wedge in the Inverness Local Plan (the Local Plan);
- (f) information (such as plot layout, house type and site analysis) which was available prior to the Inverness Area Planning Application Committee (the Committee) hearing on 30 January 2007 was not submitted to the Committee;
- (g) the outcome of the Application was a foregone conclusion as shown by the fact that the Report to the Committee was dated 12 January 2007;
- (h) the Application inaccurately referred to the land in question as being vacant when it was in fact farmland;

¹ This office can only consider complaints made by a member of the public who is aggrieved or by a person authorised to act on their behalf (Scottish Public Services Ombudsman Act 2002, Section 9[1]). Community Councils do not fall within this definition. However, I did investigate whether what the Council did or did not do with regard to the ISCC might have affected Mr C or Mr B, in terms of sustained injustice or hardship, in their capacity as members of the public.

- (i) there should have been developer contributions for the site as there was no benefit to the community from the development;
- (j) outline planning permission was granted prior to a report on road infrastructure being submitted by Transport Scotland; and
- (k) a link road had not yet been built and the cap for housing was at 600 houses.

Investigation

4. The investigation of this complaint involved obtaining and reading all the complaint correspondence between Mr C, Mr B and the Council. In addition, I obtained copies of:

- a consultation letter dated 20 November 2006 from the Council to ISCC;
- a print-out from the Council's computer system indicating that a consultation letter had been issued to ISCC on 20 November 2006;
- the Council's list of weekly planning applications lodged for the week ending 24 November 2006 (the Weekly List);
- a standard letter dated 24 November 2006, enclosing the Weekly List, which explained the procedure for Community Councils requesting more details of applications;
- a letter from ISCC to the Council dated 8 December 2006 asking for details of the Application;
- a letter from ISCC to the Council dated 18 December 2006 asking for details of the Application and submitting an objection;
- a letter from the Council to ISCC dated 8 January 2007 providing further details of the application;
- a letter dated 5 March 2007 from ISCC to the Council referring to lessons that could be drawn from the handling of the Application but confirming that their objection of 18 December 2006 was sufficient;
- a letter dated 22 March 2007 from the Council to ISCC apologising that the letters of 8 December 2006 and 18 December 2006 were not responded to timeously;
- various emails between Council officers and between Council officers and HHA;
- a report on the Application (the Report), dated 12 January 2007 and submitted to the Committee on 30 January 2007; and
- minutes of the Committee's meeting on 30 January 2007.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C, Mr B and the Council were given an opportunity to comment on a draft of this report.

Background

6. HHA are a not-for-profit development company, part-funded by the Council, set up to provide affordable housing and private homes in the Highlands. On 11 November 2006, they submitted an outline planning application to build the Fair. Prior to this, they had been developing the idea of holding a housing fair for some time with, amongst others, the Council. The idea for the Fair comes from a Scandinavian concept where a competition is held to build innovative and sustainable housing. It is aimed to showcase excellent building and design and, at the same time, to provide a housing legacy to the area.

(a) The Council failed to engage in adequate consultation with ISCC and guidelines for consultation were not followed

7. Mr C's and Mr B's central concern was that ISCC had not been given enough time to respond to the Application. They said ISCC only received details of the Application on 10 January 2007, despite having asked for information on 8 December 2006 and, again, on 18 December 2006. They said ISCC had only been able to discuss the application at their meeting on 29 January 2007 and that no-one was able to attend the Committee to make representations the following day (although Mr C, a member of ISCC, did attend the Committee hearing – see paragraph 38 below). Mr C and Mr B also said ISCC had not received the consultation letter from the Council dated 20 November 2006 and, because the letter was not sent recorded delivery, there was no proof it had been posted. They pointed out that guidance issued by the Council regarding consultation with Community Councils stated that a minimum of 14 days should be given for them to respond to planning applications and they believed this guidance had not been followed.

Relevant guidance

8. Planning Advice Note 47 (PAN 47), issued by the Scottish Executive², provides guidance on the way Community Councils should be consulted on planning applications. The following extracts are relevant to this complaint:

Introduction

1. As one of the decentralisation measures announced by the Government during the passage of the Local Government etc (Scotland) Act 1994, Community Councils will have a statutory right to be consulted on applications for planning permission from April 1996 ...

Weekly lists

13. Article 12(9) of the General Development Procedure Order (GDPO) requires that Community Councils be sent a weekly list of all planning applications as a matter of course. This is a sure baseline for all consultation arrangements ...

Approaches to consultation

14. After studying the weekly list, Community Councils may wish to view particular applications in detail. Accordingly, article 15(1)(n) of the GDPO provides for them to request formal consultation within 7 working days of the issuing date of the weekly list. The GDPO also allows for details of selected applications to be sent automatically, either where the application falls within a certain class of case or an area previously agreed between the Community Council and the authority, or where the authority considers that the application may affect local amenity ...

Timescale for consultation

16. It is important that consultation does not cause delay in the processing of planning applications. Community Councils should, therefore, ensure that their method of working allows them to respond within the consultation period. The right for Community Councils to be consulted on applications is simply an extension of the right currently available to other consultees and no special arrangements are envisaged.

² 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.

17. Under article 15(3) of the GDPO, where the Community Council is being consulted, it must be given 14 days to make its comments on an application. This 14 days begins on the issuing date of details of the application. Postage may not always provide the simplest means of access, but where it is used, authorities should as a matter of good practice allow some extra time ... 2 days should be sufficient extra time in most areas ...

18. Most cases should be handled within the timescale set out here. But the 14 day period is a minimum and it is open to a Community Council, like any other statutory consultee, to ask the authority to use its discretion to allow a reasonable extension in special cases: for example those which are unusually complex or controversial.'

9. The Council's guidance to Community Councils, 'Planning Matters for CCs' (the Guidance), states:

'When an application for planning permission is made, development control is the process by which the application is decided. Community councils are notified about all planning applications in their area through the Weekly List. If they decide that there is an application of community interest they then have 7 working days to request the plans. Some applications require advertising for various reasons ... When an application is advertised the plans are automatically sent to the [Community Council].

Whether or not the plans are requested, the [Community Council] has 14 working days to comment. However, the 14 day period is the minimum and the [Community Council] can request an extension ...'

10. The Council's concordat with Community Councils (the Concordat) states that correspondence will be responded to within ten days of receipt and that holding letters will be issued if this cannot be achieved.

Relevant documentary evidence

11. A copy of a consultation letter dated 20 November 2006 addressed to ISCC has been submitted to me as part of the investigation. In addition, I have seen a copy of a print-out from the Council's computer system which indicates that the letter was issued on 20 November 2006. There is no other proof of

postage. ISCC have confirmed, in correspondence with the Council, that they did not receive the letter.

12. A copy of the Weekly List for the week ending 24 November 2006, which included the Application, was apparently sent to ISCC, although it appears it was not received.

13. ISCC held a meeting on 4 December 2006 at which time they were told about the Application by one of their members. In commenting on a draft of this report, Mr C said that it was him who had told ISCC about the existence of the application. On 8 December 2006, ISCC wrote to the Council stating:

'Milton of Leys residents are very concerned about the planning application for the above and fear it encroaches onto the A9 green belt corridor.'

As we have no details of this planning application could you please send the detailed planning application with a map showing the distances from the A9 and its relationship to any land reserved as the green belt corridor.'

14. On 18 December 2006, having received no response to their previous letter, ISCC wrote to the Council stating:

'The idea of a Housing Fair Exhibition is desirable but the siting so near the A9 at Balvonie Braes, Milton of Leys is not. It appears this development is contrary to the Local Development Plan and as such should be refused.'

There appears to be plenty of areas in Milton of Leys and Inverness South designated for building and the Exhibition should be located there.'

15. On 8 January 2007, the Council wrote to ISCC enclosing details of the Application which had been sent on 20 November 2006 and inviting them to attend the Hearing on 30 January 2007. ISCC were asked to respond within ten working days to confirm whether they wished to attend the Hearing.

16. The Report, submitted to the Committee on 30 January 2007, referred to ISCC's objection in the following terms:

'5.1 [ISCC] – the principle of a housing fair is supported but the proposed site located as it is in close proximity to the A9 and within the designated

green wedge is not appropriate. The proposal should be sited on land designated for development ...

5.2.1 Members are advised that the applicant intends to discuss the concerns and views of the Community Councils and the residents association prior to the Committee and an update, if required, will be provided verbally.'

17. On 5 March 2007, ISCC wrote to the Council about the consultation process stating:

'We were alerted to [the Application] at our 4th Dec 2006 meeting by Milton of Leys Residents and it was agreed that details and plans should be sent for. These were requested on 8th Dec 2006 and also the press notice in the Inverness Courier was observed on that date. No reply was received by 18th Dec 2006 and with Christmas drawing near we further requested plans but also stated our concerns about building on green wedge land with the scant information at hand. Plans did not arrive until 10 January 2007 with a note of apology. At our 29th Jan 2007 meeting the planning was fully discussed and it was decided that the letter of 18th Dec 2006 was sufficient.

If the letter of 8 Dec [2006] had been answered speedily no accusations could have been made about insufficient consultation ...

We feel there is no gain to be made about pursuing these matters further especially if our objections have been sent to the [Scottish Ministers] and we wish to move on and do what is best for the residents.'

18. On 22 March 2007, the Council replied stating:

'The application was advertised in the Inverness Courier on 8 December 2006 as a departure from the Development Plan and initial consultations were sent out by standard letter on 20 November 2006 ...

Notwithstanding the significance of the application, as a proposal in outline, the application details involved one drawing only and it was this together with the application form that comprised the statutory consultation ...

I can, however, only apologise that your request by letter dated 8 December seeking further details was not responded to. Due to an administrative error it had been assumed that this had indeed been dealt with and a further copy of the plans sent out. This failure to send a reply was only realised in early January at which time a further full set of applications was sent to you ... Whilst there can be no doubt that your original request for further details was not responded to until early January, I am pleased to note that the Community Council at their meeting on 29 January reaffirmed that their initial objection of the 18th December was sufficient.

I am sure you will agree that [ISCC] were not therefore unfairly prejudiced or unable to respond to the application as considered appropriate following your meeting with the community ...

I would give you my assurances that despite the sequence of events the objections raised by [ISCC] have been fully taken into account and have been provided to the Scottish Executive for their reference and assessment.'

The Council's response to the complaint

19. The Council explained that details of the Application were included in their Weekly List, which provided a list of all applications recently lodged and was provided to Community Councils, including ISCC, on a weekly basis.

20. The Council said the consultation process also involved providing consultees with copies of the application form, submitted drawings and a standard covering letter. The Council explained that letters were generated through the Council's computerised system, which showed that a letter to ISCC had been issued on 20 November 2006. They said that all consultation letters, throughout the Council, were despatched through the Post Office mail service. They explained that consultation letters were not sent by recorded delivery. They said the letter to ISCC was not returned to them as a 'failed delivery'. They also stated, incorrectly, that ISCC had not denied receiving the letter (in fact, ISCC denied receiving the letter in their letter to the Council dated 5 March 2007).

21. The Council said that HHA subsequently amended the details of the Application, which involved a minor alteration to the boundary together with a

supporting statement. They said the amendment was lodged with the Council on 1 December 2006 and that the Council re-consulted consultees by letter on 1 December 2006. They explained that a letter should have been sent to ISCC, but was not. They said that the failure to send the information was not identified by staff until early January 2007. They said a letter, including the details sent on 20 November 2006 and those that should have been sent on 1 December 2006, were sent by first class post on 8 January 2007.

22. The Council acknowledged that ISCC's letter dated 8 December 2006 had not been responded to. They said that a subsequent letter, dated 18 December 2006, and received on 21 December 2006, could not be responded to until 8 January 2007, because the case officer was on annual leave at the time. They said that a handwritten note had been sent with their letter on 8 January 2007, apologising for the delay but also explaining that the Application only included one drawing which had been included in the initial consultation dated 20 November 2006 and that there were no further details available as it was an application in outline only.

23. The Council said the letters lodged by ISCC on 8 December 2006 and 18 December 2006 both expressed concerns about the scope of the Application. They said the letter dated 18 December 2006 clearly stated that ISCC objected to the proposal on the basis of policy. The Council said, given that the application provided no other details other than site identification, the scope for material objections other than on policy grounds would have been, in any event, limited.

24. The Council said that, because the Application was advertised as a departure from the Local Plan, and in view of objections that had been received, the Application was considered under the Council's Hearings Procedure. They said ISCC were invited, on 8 January 2007, to take part in the hearing process but that they did not indicate they wanted to take part.

Mr C's and Mr B's comments

25. In commenting on the Council's response to the complaint, Mr B said that when he attended the ISCC meeting on 4 December 2006 no-one had seen the Weekly List referred to by the Council. He said, in addition, that the Weekly List had not been published on the Council's website. He disputed the Council's statement that ISCC had not denied receiving the consultation letter dated

20 November 2006. Mr B said his point was supported by a statement made in a letter from the Council to him dated 18 July 2007, which stated:

'As previously stated [the Director of Planning] also took it that [ISCC member] could not recollect receiving the consultation but there is absolutely no possibility of anyone in the Council questioning her integrity over this matter. It is not a matter of doubting [ISCC member's] assertion that she did not receive it, rather it is the case that the Council's records indicate that a consultation was sent out and it was not returned undelivered.'

Mr B maintained that the Council had no proof the consultation letter was ever posted. He said it was not too hard to imagine that an overworked member of planning staff had simply binned the consultation letter. He also said that the Weekly List had not been received and that ISCC's Chair had stated that no list had been received. Mr B said the Council's statutory notification procedure was incompetent.

26. Mr B said ISCC's letter of objection dated 18 December 2006 simply said they wished to lodge an objection on the basis of the information they had. He said ISCC feared that if they waited any longer for the official information to come from the Council it might never arrive because of the intervening festive holidays. Mr B said the information they had to hand was no more than the local newspaper notice and local gossip.

27. Mr B said he was present at the ISCC meeting on 29 January 2007 and there was a feeling among those attending that the Application was a 'done deal' and there was nothing they could do to stop it. He said that at the end of the meeting it was discovered that no-one was available to represent ISCC at the meeting the following day. Mr B said it was in those circumstances that ISCC had accepted that the objection submitted on 18 December 2006 would have to be sufficient. He said it was only sufficient in the absence of anyone from ISCC being able to attend the Committee's meeting the following day.

28. Mr B said that if the letter ISCC had written on 5 March 2007 had been written today, it would have been of a different tenor, as he said much evidence had been discovered since then. He also said that many members of ISCC had left since that time and that elections for the new ISCC had returned Community Councillors who had a keen desire to hold the Council to account.

29. Mr B said that, when details were sent out to ISCC on 8 January 2007, they contained nothing much more than what had already been gleaned from local gossip. He said that because of the Council's failure to consult properly, the requisite 14 day period for consultation was of no significance at all in the case. He said ISCC did not elect not to participate at the Hearing, but could not participate due to circumstances beyond their control. Mr B added that the objection that had been lodged by ISCC might just have been good enough to sway the determination of the Application had the failure of ISCC to attend not been unfairly criticised by a Councillor on the Committee.

30. In providing his comments on the Council's response to the complaint, Mr C said the fact that ISCC had not received details of the amendments that should have been sent out on 1 December 2006 showed there had been a lack of consultation. He said that, in any event, the drawing that accompanied the Application was inadequate for anyone to form an opinion on the merits of the Application. He said that, in his experience, planning applications contained more detail.

31. Mr C agreed with Mr B that ISCC did not choose not to attend the Hearing, but could not because there was no time to prepare. Mr C stated that at the time of the Hearing, he was a new member of ISCC and that he had raised his hand but was ignored when the Committee asked if an ISCC member was present. Mr B said, however, that a local Councillor (who had attended the ISCC meeting on 29 January 2007) had put over the objections of ISCC, but these were ignored by other Councillors.

(a) Conclusion

32. I note that ISCC state they did not receive the Council's consultation letter dated 20 November 2006 or the Weekly List for the week ending 24 November 2006. I have no reason to question this statement, but by the same token, I have no grounds to question the Council's position that the letters were sent. Copies of the letters have been provided to me and, in addition, I have seen a computer print-out showing that the consultation letter dated 20 November 2006 was issued. There is no evidence to support Mr B's statement that the letters might have been binned. With regard to Mr C's and Mr B's point that there is no absolute proof of postage, as the letters were not sent recorded delivery, I do not consider this is a failing on the Council's part. They, like most public organisations, deal with a huge volume of correspondence which is important, confidential and relates to the fulfilment of

statutory duties. It is not practical, nor is it reasonable to expect, that all correspondence should be sent by recorded delivery. I, therefore, consider that the fact the letters were not sent by recorded delivery does not pose a problem in itself.

33. It is likely, however, that the consultation letter dated 20 November 2006 was not received, as it is improbable, in my view, that ISCC should have written to the Council on both 8 December 2006 and 18 December 2006 requesting details of the Application had these already been received. The Council, prior to an investigation being launched by this office, acknowledged that they did not respond to these letters timeously and issued ISCC with an apology. In my view, it was right that they should do so, as they had clearly breached their commitment to respond to correspondence within ten days (see the Concordat at paragraph 10 above) and should have provided the information as soon as it was requested. The Council also failed to send ISCC details of amendments to the Application on 1 December 2006 when they notified other consultees.

34. While these failures on the Council's part were unfortunate, the key question for me is whether they resulted in ISCC being deprived of their statutory right to be consulted. I have concluded that they did not.

35. ISCC were sent all relevant information in a letter dated 8 January 2007, which they say was received on 10 January 2007. This means that ISCC were given the 14 working days allowed by statute to consider the Application's details and submit objections (see PAN 47 and the Guidance at paragraphs 8 and 9 above). Had ISCC felt that more time was required, it was open to them to request an extension in line with the Guidance. They did not do this. In addition, given that ISCC were notified of the date of the Committee's meeting in a letter dated 8 January 2007 and were asked to respond within ten days if they wished to attend, it was incumbent on ISCC to ensure they had a member available if they wished for someone to attend. PAN 47 makes clear that Community Councils must have arrangements in place to respond quickly to consultations and it is not the Council's fault if no ISCC members were available to represent them at the meeting.

36. I am satisfied that, while the Council failed to respond timeously to ISCC's correspondence, the statutory consultation procedures were carried out appropriately and there was no maladministration in that respect. Despite the

problems that initially affected the consultation, the Council ultimately provided ISCC with the statutory 14 days to respond to the consultation.

37. Where there was a clear administrative failure on the Council's part was in not responding promptly to ISCC's letters. The Council have acknowledged this and issued an apology to ISCC prior to an investigation being launched by this office. I am satisfied that the apology which has been issued by the Council represents a suitable remedy to the failing identified. It is the practice of this office not to uphold complaints where fault is acknowledged and appropriate remedial action taken before our involvement in a complaint and, consequently, while there were failings in the way the Council dealt with ISCC's correspondence, I have no further criticism to make here.

38. Finally, I am unconvinced by Mr C's and Mr B's arguments that the consultation process denied ISCC a full opportunity to comment on the Application. Mr B has stated that no-one from ISCC was available to attend the Committee hearing on 30 January 2007, however, ISCC were notified of the date of the meeting and given ten working days to confirm attendance in a letter dated 8 January 2007. There also appears to be some confusion about the availability of a member of ISCC to attend. Both Mr C and Mr B attended ISCC's meeting on 29 January 2007 and both attended the Committee hearing the following day. Mr C has told me that he was a member of ISCC and that he raised his hand but was ignored when the Committee asked whether an ISCC member was present. I cannot confirm whether this occurred, but given that Mr C spoke at the hearing it seems to me that he would also have had the opportunity to speak on ISCC's behalf. It is also of note that Mr C has told me that a local Councillor (who also attended the ISCC meeting on 29 January 2007) fully put across ISCC's points during the Committee hearing. These factors, combined with ISCC's statement to the Council that the objection detailed in their letter dated 18 December 2006 was sufficient, have led me to the view that ISCC were given sufficient opportunity to provide their comments and, indeed, that the Committee were fully aware of ISCC's concerns before reaching a decision on the Application.

39. In all the circumstances, I do not uphold the complaint. However, while there are no grounds to uphold this complaint, the Council may wish to consider whether, in future, consultation letters and Weekly Lists should be sent to Community Councils by email as well as in the post. Although the statutory consultation process was not affected in this case, sending these documents by

email in future would resolve any uncertainty about whether they have been sent or received. I have drawn the Council's attention to this suggestion.

(b) Emails between Council officers, and Council officers and the applicant, show that the outcome of the Application was pre-judged

40. Annex 2 reproduces the emails Mr C and Mr B believed showed evidence that the Application had been pre-judged.

The Council's response to the complaint

41. The Council said the officer in charge of processing the Application (Officer 1) was located in the Inverness Area Planning Office. They said all other officers referred to in the emails were located in separate buildings and correspondence by email was, therefore, a regular and useful means of communication.

42. The Council said the opportunity for the Highland area to host the Fair had been the subject of detailed and extensive discussions with the Council and other appropriate bodies. They said HHA sought to deliver the project and the site selection process involved a detailed site analysis. The Council explained that representatives of the Council were involved in these discussions some two years before the Application was received. They said Officer 1 was aware of the background of the Application and that it would be unusual in the extreme if pre-application discussions had not taken place given the complexity of the proposal. The Council said this was a procedure that would become mandatory with the commencement of the Planning etc (Scotland) Act 2006.

43. The Council said the email correspondence highlighted by Mr C and Mr B provided a dialogue between officers which indicated not only that the proposal had been the subject of detailed pre-application discussions but also that the specific details were well known to all correspondents. They said, more importantly, that when officers made recommendations contrary to the Local Plan it was for elected members on the Committee to make the final decision. They said the officer leading on the case had to take into account all material considerations, and on complex applications, seek guidance and input from colleagues with relevant expertise.

44. The Council said that, while the email from Officer 1 to another officer of the Council (Officer 2) dated 21 November 2006 should have said 'we are obviously going to recommend approval' rather than 'we are obviously going to

approve it', it had to be taken in the context of earlier and subsequent correspondence which gave a clear indication that the proposals were in no way pre-judged. The Council said that input from colleagues was fundamental in the assessment and that the email from Officer 1 to another officer of the Council (Officer 3) on 24 November 2006 at 17:10 provided a breakdown of all the issues that remained of concern to her in the assessment.

45. The Council said that each of the issues identified in that email showed a careful and detailed appraisal. Officer 1 was in discussion with the applicants and the policy issue was referred to appropriate officers from whom detailed and comprehensive comments were received. The Council said that, however unfortunate the wording of the email, it had to be viewed in that context. They said the very detailed Report submitted to the Committee, together with the determination of the Application by the Committee using the formal hearing process, clearly demonstrated that the proposal could not have been pre-judged. The Council said that, in any event, there had to be discussion between officers in respect of various issues in order for considered recommendations to be produced.

Mr C's and Mr B's comments on the Council's response

46. Mr C, in commenting on the Council's response to my investigation, maintained that the emails in Annex 2 indicated collusion and that the outcome of the Application was a foregone conclusion. Mr B, in providing his comments, said that whether or not the word 'recommend' had been included in Officer 1's email dated 21 November 2006, it was still the case that Officer 1 had completely made up her mind about the Application. Mr B said that Officer 1 had a serious conflict of interest in the case, because the Application was one which the Council had a major interest in. He said that Officer 1 could not be expected to exercise impartiality given that conflict of interest (see complaint (d) below where these points are implicitly considered).

47. Mr B said the email from Officer 2 to Officer 1 dated 21 November 2006 at 09:19 provided exceptional and justifiable circumstances for Officer 1's statement that the Application would obviously be approved. Mr B said the emails showed that Officer 1's senior colleagues all thought that the Fair should go ahead on Green Wedge land, which was inappropriate.

48. Mr B said the email from Officer 3 to the HHA Officer demonstrated that the Council sought to frustrate community consultation. He said the statement

that a meeting should only be arranged once the 21 day advertisement period had elapsed showed that the Council did not want to give ISCC sufficient time to respond to the Application. Mr B said Officer 1 never had a meeting with ISCC and that the HHA Officer only met with them on 29 January 2007.

(b) Conclusion

49. There is no doubt that the wording used by Officer 1 in her email of 21 November 2006 is unfortunate. Public service workers must take care not only to fulfil their responsibilities appropriately, but also to be seen to be doing so. Otherwise, public confidence in public administration might be undermined with negative impacts for public service delivery. It is important that internal communications maintain an appropriate tone and that careful wording is used to avoid possible misinterpretation.

50. In this case, I can see why Mr C and Mr B reached the view that the Application had been pre-judged. However, I agree with the Council that the wording used by Officer 1 must be considered in context and that other emails showed that the details of the Application were still being considered and that the outcome was not a foregone conclusion. The Council have explained that Officer 1 already had detailed knowledge of the case at that early stage and that her view at that time was that the Application was likely to be recommended for approval. The Council have also correctly stated that Officer 1 was not responsible for approving the Application and that determination of the Application was a matter for the Committee. The Report to Committee, in my view, shows that a detailed and balanced assessment of the planning merits of the Application was undertaken by Officer 1. The Committee did not have to accept Officer 1's recommendation and could have rejected the Application.

51. I am also satisfied that the other emails highlighted by Mr C and Mr B show no indication of pre-judgement. I have seen no evidence to support Mr B's specific point about an alleged deliberate attempt to deny ISCC an opportunity to be consulted. The email from Officer 3 to the HHA Officer on 29 November 2006 refers to the possibility of a meeting being arranged with ISCC after the 21 day period following advertisement had elapsed. However, such a meeting would not have formed part of the Council's formal consultation and, it appears, was being considered to help ease potential concerns that ISCC might have. This meeting was separate from the formal consultation which took place on 20 November 2006 and 8 January 2007, and the fact that it

only went ahead with HHA on 29 January 2007 does not, in my view, indicate that the Council did not wish to consult with ISCC.

52. I am satisfied that, while the wording of the email from Officer 1 dated 21 November 2006 was unfortunate, it does not represent evidence of maladministration. I am also satisfied that none of the emails in Annex 2 represent evidence of pre-judgement or other inappropriate action on the part of the Council's staff. Consequently, I do not uphold this complaint.

(c) Details of the Application did not appear in the Council's Weekly List

53. The Council submitted a copy of the Weekly List which included details of the Application. They explained that the version of the Weekly List that had appeared on their website, which was not the statutory Weekly List, had not included details of the Application. They explained that the statutory Weekly List sent to Community Councils and the list which appeared on their website were normally identical, but that it depended on how information was extracted from their computer system. They said that, in this case, the Application had not appeared on the website because the Application had come in at the end of the previous week and the officer compiling the list for the internet had not gone back far enough to include it.

(c) Conclusion

54. The Council's statutory Weekly List did include details of the Application. However, I note that the version of the Weekly List that appeared on their website did not. This was due to a mistake by the officer who compiled the list for inclusion on the website.

55. The key issue for me, in determining whether this complaint should or should not be upheld, is whether the officer's mistake had any significant impact on Mr B and whether it resulted in any injustice to him. In my view, it did not.

56. This is because Mr B was clearly aware of the Application and took advantage of the opportunity to submit objections and speak to those objections before the Committee. Indeed, I note that the Application was publicised through an advertisement in the local press on 8 December 2006, so that Mr B, like all other members of the public with an interest in the Application, was given proper notification of its existence. In my view, therefore, the fact that the Application did not appear on the version of the Weekly List that was placed on the Council's website had no substantive impact on Mr B.

57. In light of my comments above, I do not uphold this complaint on the basis that the Council's mistake did not lead to any hardship or injustice to Mr C.

58. While I do not uphold the complaint, I suggest that the Council should consider how they might ensure that the version of the Weekly List that appears on their website is identical to the official version which is sent to Community Councils. I have drawn the Council's attention to the issue so that they can consider how they might improve their future practice.

(d) There was collusion in the planning process given that the applicant, HHA, is funded by the Council

59. The Council said HHA were part-funded by the Council. They said it was for this reason that the Application could not be determined prior to having been referred to, and considered by, Scottish Ministers. They said the Report to the Committee and the Hearing minutes made this clear. The Council said the implication that there was collusion in the planning process because of their part-funding of HHA was without basis. They said it was evident the funding relationship between the Council and HHA had no bearing on the eventual outcome and that this was supported by the outcome of Scottish Ministers' deliberations.

(d) Conclusion

60. It is not unusual for planning authorities to have a financial interest in a planning application. Where this is the case, a procedure exists for applications to be referred to Scottish Ministers, who have the power to call in applications to determine them themselves or leave them to the planning authority to determine. If Scottish Ministers had any concerns about the Council's ability to determine the application fairly and impartially in this case, then they could have called it in. They did not do so.

61. The fact that HHA is part-funded by the Council does not, therefore, represent evidence of collusion in the planning process. I am also satisfied that the procedure of referral to Scottish Ministers ensured that the Council's interest in the application did not unduly impact on their decision to grant outline planning permission. Consequently, I do not uphold the complaint.

(e) Planning permission should not have been granted as the land was marked as Green Wedge in the Local Plan

62. Mr C pointed out that the Application went against the Local Plan, because it was on Green Wedge land that was protected from development.

63. The Council said the Application site was situated in an area defined as Green Wedge within the Local Plan. They said Policy 41 applied, which stated:
'the Council will safeguard and seek to open to public access, six major 'Green Wedges' of strategic importance to the setting of the City.'

64. The Council said the Application site was specifically identified at a Public Local Inquiry held in 2004. They said the Scottish Executive Inquiry Reporters Unit's reporter (the Reporter) dealt specifically with the Green Wedge allocation and stated:

'Green Wedge boundaries cannot be presumed to be inviolate at this stage, and site specific or other sound planning reasons could justify allocating particular sites and outweigh any disadvantages of allocation. These reasons could include providing a range and choice, including affordable housing, and housing for varying needs; establishing a better urban boundary; or securing other benefits that are unlikely to be achieved by other means.'

65. The Council said this provided a clear indication that sites within Green Wedges might be suitable for development. They said that the Reporter had concluded that there was no need to release additional land at the time, because the requisite housing land supply had been met, but that restrictions on development within suitable sites, within the defined Green Wedge area, were always to be the subject of review.

66. The Council said that Policy 41 also stated that providing public access was a key aim. They said that 60 percent of the Application site would provide open space and, therefore, accorded with that aim.

(e) Conclusion

67. I note that the Application was advertised as a departure from the Local Plan and that the Report put to the Committee included a full justification (similar to the explanation provided by the Council at paragraphs 64 to 65 above) for the departure. Mr C is aggrieved that the Application was approved despite being a departure from the Local Plan, however, it is not inappropriate

for planning authorities to depart from their Local Plan where there are sound reasons for doing so and where they have justified the departure. That was the case here and, consequently, I do not uphold the complaint.

(f) Information (such as plot layout, house type and site analysis) which was available prior to the Committee hearing on 30 January 2007 was not submitted to the Committee

68. Mr C said that the day after the Committee hearing, the Royal Incorporation of Architects in Scotland launched the competition to build houses for the Fair on their website. He said this included plot layout, house types and site analysis and that this information had been prepared well in advance of the Committee hearing. Mr C believed that these documents should have been made available to the Committee.

69. The Council said the Application was in outline and only included a site plan. They said that no details of the future scope of the development formed part of the Application. They said the merits or otherwise of the proposal were judged solely on the principles of the development although the terms of the conditional planning permission placed a restriction on the total number of houses/units to be accommodated on the site.

(f) Conclusion

70. The Application was in outline only and the information that had been provided in the Application was sufficient for outline planning consent to be granted. Mr C believed that additional information should have been submitted, but there was no requirement for that to happen. Consequently, I do not uphold the complaint.

(g) The outcome of the Application was a foregone conclusion as shown by the fact that the Report to the Committee was dated 12 January 2007

71. Mr C pointed out that the Report was dated 12 January 2007 and he said this showed that the Council had already made their mind up prior to having received ISCC's response to the Application.

72. The Council said the Report was dated 12 January 2007 but was not, in fact, finalised until 19 January 2007. They explained that a draft of the Report was begun on 12 January 2007, and this detailed the scope and layout of the Application, consultation comments received at that time and identified policy constraints. The Council said these were factual matters and it was common

for officers to commence drafting a report at an early stage, especially if there were a range of complicated issues to cover.

(g) Conclusion

73. I do not consider that the date on which the Report was finalised can be taken to indicate that the outcome of the application was a foregone conclusion. It is the case that the Report was finalised prior to having received further comments from ISCC; however, the Report refers to the objection submitted by ISCC on 18 December 2006 and to the fact that an update would be provided to the Committee if it was required. In the event, ISCC did not add to the objection it had already made on 18 December 2006. In the circumstances, I do not uphold the complaint.

(h) The Application inaccurately referred to the land in question as being vacant when it was in fact farmland

74. The Council said that Section 6 of the Application form stated that the land was vacant. They said that while the description of the land as agricultural could have been used to similar effect, the description made clear that the site was not developed or built upon.

(h) Conclusion

75. I do not believe the description of the land as vacant on the application form would have been misleading and, although referring to it as agricultural land would have been more precise, I cannot see that the term could have led to any injustice being suffered by members of the public. In any event, I note that the Report to the Committee states clearly on its first page that the site was being used for agricultural purposes. I am, therefore, satisfied that, in this regard, the Committee determined the Application on the basis of fully accurate information. In light of the above, I do not uphold the complaint.

(i) There should have been developer contributions for the site as there was no benefit to the community from the development

76. The Council said Policy GP 5 – Developer Contributions – of the Local Plan stated that the Council would seek developer contributions when specific infrastructure was necessary for a development to proceed. They said they did not yet have a general protocol for securing developer contributions. They explained that within certain areas, for example, those included within the Inshes/Milton of Leys Development Brief, an agreed amount was levied for every residential unit granted planning permission.

77. The Council said that in the absence of a general protocol and because the application site was not included within an area over which the Council had established a need for developer contributions, the application site was not subject to developer contributions. They said, however, that the development would deliver a minimum of 31 percent of the total of number of houses as affordable homes, which was in excess of the Council's adopted minimum of 25 percent for housing developments with more than ten units.

(i) Conclusion

78. I note that there was no requirement for the Council to seek developer contributions in this case. Notwithstanding, I note that almost a third of housing will be affordable and it is hard, therefore, to agree with Mr C that there will be no benefit to the community from the development. I also note that the Report specifically referred to developer contributions and explained why they should not be sought in this case. In the circumstances, I do not uphold the complaint.

(j) Outline planning permission was granted prior to a report on road infrastructure being submitted by Transport Scotland

79. The Council said that comments from Transport Scotland were not received prior to the Application being considered by the Committee on 30 January 2007. They said they had anticipated that a verbal update could have been provided at the Hearing, however, Transport Scotland's comments were only received on 7 March 2007. The Council explained that although they had sent the Application to Scottish Ministers on 2 February 2007, they did not start considering it until Transport Scotland's comments had been received on 7 March 2007. The Council made clear that, because the Application was subject to referral to Scottish Ministers, it was only formally granted on 30 May 2007. They said that the planning permission was, therefore, not granted prior to Transport Scotland's comments having been formally considered.

(j) Conclusion

80. The Council did not formally grant planning permission prior to Transport Scotland submitting their comments. It is the case that their comments were not available at the Hearing on 30 January 2007, but given that Scottish Ministers could not begin their consideration of the Application until the comments had been received, there was no chance that the planning

permission could be granted prior to Transport Scotland's comments having been considered. Consequently, I do not uphold the complaint.

(k) A link road had not yet been built and the cap for housing was at 600 houses

81. The Council said that Policy 80 of the Local Plan stated that 'capacity is limited to 600 dwellings pending formation of a distributor road link to the A9-A82 Trunk Road Link'. The Council said this constraint was referred to in the Report. The Council said that, in addition, condition 15 of the planning permission restricted development of any part of the Fair site above 600 houses unless the link road was completed.

82. The Council said a recent assessment of the total number of houses for which planning permission had been granted was 589 houses. The Council said that of those 456 had been constructed. The Council said there was no breach of their policy in this case and that the terms of the planning condition showed they had properly considered the issue and taken appropriate steps to ensure full compliance with the policy.

(k) Conclusion

83. In deciding to approve the Application, the Committee were aware that housing was capped at 600 houses and that the link road would have to be completed timeously to allow further house building in the area. This matter was contained in the Report and fully considered, as seen by the fact that a condition of the planning permission refers to it. Therefore, the fact that there was a policy restricting the number of houses that could be built did not prevent the Committee from approving the Application and there is no indication of maladministration in that respect. Consequently, I do not uphold this complaint.

Explanation of abbreviations used

Mr C	One of the complainants, whose concerns are reflected in complaints (a) and (b) and (d) to (k)
The Application	An application for outline planning permission for the Fair
The Fair	The Highland Housing Fair
The Council	The Highland Council
Mr B	One of the complainants, whose concerns are reflected in complaints (a) to (c)
ISCC	Inverness South Community Council
HHA	Highland Housing Alliance (a not-for-profit development company part-funded by the Council)
The Local Plan	The Inverness Local Plan
The Committee	The Inverness Area Planning Applications Committee
The Weekly List	A list of planning applications issued to Community Councils every week
The Report	The report submitted to the Committee regarding the Application
PAN 47	The Scottish Government's Planning Advice Note 47

GDPO	General Development Procedure Order
The Guidance	The Council 'Planning Matters for CCs [Community Councils]'
The Concordat	The Council's concordat with Community Councils
The Hearing	The hearing of the Committee held on 30 January 2007 to consider the Application
Officer 1	The Council officer responsible for processing the Application
Officer 2	Another Council officer
Officer 3	Another Council officer
HHA Officer	The HHA Officer
The Reporter	A reporter from the Scottish Executive Inquiry Reporter's Unit (now the Scottish Government's Directorate for Planning and Environmental Appeals)

Emails

21 November 2006 at 09:19 from Officer 2 to colleagues

'Could I take this opportunity to remind colleagues – notwithstanding the possible departure in this exceptional case – that securing of Green Wedge lands must be an automatic consideration in planning applications which fall within the Expansion Areas and embrace Green Wedge in the same ownership – as this model and the Inshes and Milton of Leys Brief propose.

Could I ask also that any further proposed incursions which are contrary to the Local Plan are considered and reported in the same vein.

These are principles which apply in each of the Green Wedges in the City.'

21 November 2006 at 09:43 from Officer 1 to colleagues

'I have the application for the housing fair site at Inshes – Balvonie – whilst I appreciate that there has obviously been a considerable input in the final selection of the site ([Officer 3] has led on this I believe) we obviously need to set up a meeting to discuss the planning issues. The application has been advertised as a Departure and there is pressure to get it to the Jan[uary] 30th meeting.

[The HHA Officer] has asked for a meeting with [Officer 3] and others directly involved in [the Fair] on Tuesday 28th – not sure of time or location yet. Can you each attend please but could we have a discussion this Friday to discuss the issues – I can manage 11am on Friday or 2pm?'

21 November 2006 at 09:46 from Officer 2 to Officer 1

'Are you asking me to attend or just those you are addressing.'

21 November 2006 at 12:29 from Officer 1 to Officer 2

'Would hope you may be able to attend too? Obviously it is contrary to plan but also we are obviously going to approve it given the background. Issues re developer contributions should however be aired.'

24 November 2006 at 17:10 from Officer 1 to Officer 3

'A few points and issues which will be relevant to the overall assessment and as an update before Tuesday's meeting.

I anticipate objections from both the local Community Councils and [Councillor] has already questioned how we can justify the loss of Green Wedge. On this basis – I wondered if a community meeting to expand on the details and principles involved had been considered. The plan really gives the barest of information and for many people coming to see the plans – there is no background as to what [the Fair] is about?

Other issues

- Road access – need to consider possible future development of film studio site – we have had informal inquiries from [...] re possible development – TECS [Transport, Environment and Community Services] would want to see a roundabout junction to serve both sites (albeit this may only require land reservation for current application).
- Currently the total number of houses capable of being developed without completion of the second main distributor road through the park to link Milton of Leys to Inshes is 600. This capacity is close to being met – am checking exact figures for capacity.
- Tree margins of 20 metres must be respected.
- Additional tree planting will be required to all boundaries to supplement and support existing trees.
- Developer contributions – currently approx £2000 per unit.
- SEPA [Scottish Environment Protection Agency] – no specific objections.
- SNH [Scottish Natural Heritage] - does not formally object but states that 'an alternative location is found for this development outwith the Green Wedge.'

27 November 2006 at 08:57 from Officer 3 to Officer 1

'I understood there was a supporting statement with the application outlining the origins/nature of the event – if not can easily be supplied via [the HHA Officer]

...

There were 400 houses complete at Milton of Leys according to our land audit people a couple of months ago – obviously that is a moving target ...

Roads comments look OTT to me. Of course we need masterplan for the commercial etc site to the south – again [Officer 2] is in touch here following his adverse comments on [...] proposal for a care home. I'm sure that earlier layouts were served from a loop linking the two stub legs from existing roundabouts?? I certainly query whether we need yet another roundabout where this leg will be serving perhaps a little over 100 houses when [the Fair]

site is fully developed – don't see how this could possibly be justified on projected flows.'

29 November 2006 at 12:28 from Officer 3 to the HHA Officer

'Also had a chat with [Officer 1] about timescales on the planning decision, stressing that with initial Fair publicity on 15 December and competition packs including legal documentation going out on 15 January, we would be in a very exposed place unless the outline planning decision is forthcoming at Committee on 30 January (with subsequent reference to Ministers). [Officer 1] tells me (fortunately) that the application has yet to be advertised. As discussed yesterday, we need to cover as many options as possible here to avoid risk of any future resubmission/readvert. Our best take on this is that the current application/red line plan needs to be tweaked to take in all the land – the temporary use of the second field for carparking/tented facilities etc now appears likely, and [Officer 1] advises that without a suggested SUDS solution ... this will invite concerns from the local member and other councillors for whom flooding is a paramount issue at the moment. Submitting for the bigger area also allows conditions to support any [Section 75] concerning future amenity/recreational use of the second field. I understand that TECS (Transport, Environment and Community Services) are happy with the existing junction location but will probably want a secondary access link with adjoining ... proposals (but avoid rat-running!). There is also, of course, the missing 6 page explanatory statement which was ... lodged with the earlier application but needs to be available to dampen down community worst fears etc.

[Officer 1] would welcome a new plan and tweaked application form, and will look at the appropriate advert date/period needed to ensure that this application can be brought to Area Cmttee on the 30 January. Could this be lodged with supporting papers on Friday morning [the HHA Officer]? – [Officer 1] could meet at 10.00 am?

There is an objection from [ISCC] – [Officer 1] thinks it is a good idea to meet with them but after expiry of the 21 day advert period when we can be clear on the extent and content of all representations made – that would involve getting a meeting with the [Community Council] early/mid January ... We need to make appropriate arrangements with the [Community Council] secretary.'