

Scottish Parliament Region: Central Scotland

Case 200501028: South Lanarkshire Council

Summary of Investigation

Category

Local government: Planning; Handling of application (complaints by opponents)

Overview

The complainant (Mr C) raised concerns that South Lanarkshire Council (the Council) had not given proper consideration to a planning application for a listed building, had not dealt with enquiries properly or satisfactorily, that an informative guide produced by the Council was deficient and that there were flaws in the Council's complaint handling processes.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council did not give proper consideration to the planning application (*not upheld*);
- (b) the Council did not deal with Mr C's enquiries properly or satisfactorily (*not upheld*);
- (c) the Council's publication 'A Guide to the Planning Decision-Making Process' was deficient (*not upheld*); and
- (d) the Council's complaints process was flawed (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council apologise to Mr C for not responding appropriately to his point in letters of 19 March 2005, 28 March 2005 and 2 April 2005 advising that he had not received the promised letter of 11 March 2005.

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

Main Investigation Report

Introduction

1. On 15 August 2005 the Ombudsman received a complaint from a man, referred to in this report as Mr C. The complaint related to the actions of South Lanarkshire Council (the Council) regarding planning applications concerning the house and garden of a listed building next to Mr C's house. Mr C was concerned that the Council had not given proper consideration to the application and had not dealt properly with his enquiries or complaints related to the applications. Mr C also expressed his concern that the Council's publication '*A Guide to the Planning Decision-Making Process*' (the Guide) was deficient.

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

- (a) the Council did not give proper consideration to the planning application;
- (b) the Council did not deal with Mr C's enquiries properly or satisfactorily;
- (c) the Council's publication, the Guide, was deficient; and
- (d) the Council's complaints process was flawed.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant information, including correspondence between the Council and various parties (including Mr C) regarding the application, copies of Council information documents, minutes and internal correspondence and relevant local plans, national planning guidance and other policies. I also sought the advice of an adviser to the Ombudsman with specialist knowledge of planning matters (the Adviser). I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

4. Mr C's house is in a street bordering the garden of a grade C listed property. In May 2004 a planning application was made to convert and extend the listed property and develop a number of dwellings within the garden. This application was withdrawn and replaced by a second application in September 2004 which was also withdrawn and replaced with a third application in February 2005. This application was approved in May 2005.

5. Mr C made enquiries about all of these applications and also formally objected to them all. Mr C believed that Council policies would be breached by the granting of planning permission for the development and sought clarification

from the Council of their view on the matter. Correspondence between Mr C and the Council continued for over a year. He believed that the Council were not properly responding to his concerns and made a formal complaint. He pursued this to the conclusion of the Council's complaints process, but his experience of it led him to have concerns about its fairness and effectiveness. It is worth noting here that the volume of correspondence between Mr C and the Council was considerable and I have referred only to those pieces of correspondence that I felt were material to the complaints Mr C brought to this office.

(a) The Council did not give proper consideration to the planning application

6. Mr C identified several areas where he believed that the application breached national and Council policies and complained that these were neither identified nor addressed by the Council. He also believed that the Council's policy of making a decision on a request for a hearing by an objector at the Planning Committee (the Committee) meeting held to decide the application was unreasonable; that the Council's policy on discussing applications with objectors was unfair; that these policies in particular meant that the Council's decision-making process on planning applications was deficient and that, as a result of these issues, the Council did not give proper consideration to the planning application.

7. The Town and Country Planning (Scotland) Act 1997 requires that if a Council believes that a planning application is potentially contrary to the Local Development Plan they have to advertise it as such. If an objector makes a material objection that an application is potentially contrary to a Local Development Plan, Policy and/or national guidance, the Council have to respond to this and notify the Planning Committee of the objection and respond to it in a report to the Committee.

8. The third application that Mr C complained about, was advertised by the Council as being potentially contrary to the Local Development Plan with reference to Policy ENV12 – Protection of Trees.

9. Annex 3 shows the objections that Mr C raised about the planning application, which national or Council plans, policies or guidance he believed they breached and the paragraphs of the Report to the Committee (the Report) that addressed these objections. Mr C has a copy of the Report.

10. Mr C raised further objections with the Council regarding the applications. He objected that the Council had not carried out its own tree survey and that approval of the application would lead to some retained trees being vulnerable to claims that they were too close to the new houses. The Council explained to Mr C that the tree survey submitted by the applicant would be passed to the Council's Arboricultural Officer for comment and analysis. Paragraph 5.1(e) of the Report indicates that this was undertaken. The same paragraph also explains that appropriate conditions had been imposed on the approval to ensure that the retained trees were adequately protected, further detail was given in paragraph 6.6 of the Report.

11. Mr C believed that the Council's policy that objectors' requests for hearings were discussed at the Committee meeting held to determine an application was unfair. He believed that this policy was unreasonable because any unprepared objector who was granted a hearing was given an unreasonably short time to prepare their comments or, equally, a prepared objector who was not granted a hearing would have been subject to an unnecessary waste of time or money.

12. Mr C also believed that the Council's policy on discussing applications with objectors was unfair. The Council told Mr C that it would be prohibitive for planning officials to discuss applications with objectors. The Council also advised Mr C that discussions with objectors were restricted to matters of fact to prevent any pre-judgement of applications.

(a) Conclusion

13. Mr C complained that several areas where he believed the applications breached national development plans and the Local Development Plans, Council guidelines and policies and were neither identified by the Council nor addressed by them. The Council's own consideration resulted in the application being advertised as potentially contrary to the Local Development Plan, with specific reference to the policy on the protection of trees. Mr C made several objections to the application with reference to various national development plans, the Local Development Plan and Council guidelines and policies. I am satisfied that the Report addressed all those objections and explained why the Council felt that approval of the application was not contrary to the various plans, guidelines or policies. It is clear to me, therefore, that the Council gave due consideration to the application and Mr C's objections."

14. Mr C complained that the Council's policy on making decisions on objectors' requests for discretionary hearings at the Committee meeting held to determine the application was unfair because it could result in objectors not having a reasonable amount of time to prepare their comments or causing them to waste time and money preparing comments that would, ultimately, not be heard. I do not agree and I am satisfied that the Council's policy was clearly laid out in their literature and, therefore, any objectors who requested a hearing would do so in the knowledge that the request may not be granted.

15. Mr C complained that the Council's policy on discussions with objectors about applications was unfair. I consider the Council reasonably explained that discussions with objectors were kept to matters of fact in order to prevent any pre-judgement of the application. It is also reasonable that the Council limited such discussions on the grounds of financial and time costs.

16. Mr C complained that the Council did not give proper consideration to the planning application. However, I can see no evidence that the Council did not consider the application properly in terms of the Town and Country Planning (Scotland) Act 1997 or their own policies and procedures. As an objector, Mr C's objections were considered and, where appropriate, responded to in the Report. Given all of the above, I do not uphold the complaint.

(b) The Council did not deal with Mr C's enquiries properly or satisfactorily

17. As noted in paragraph 5 above, Mr C corresponded with the Council for over a year. In this time he sent several letters of enquiry which he believed were not properly responded to. He also believed that a reply promised by the Planning Area Manager (Officer 1) was not supplied to him within a reasonable time. Mr C also complained that his enquiries about the hearing process and his request for a delay in the planning proceedings were ignored. Two letters were not received by Mr C until after the Committee had made their decision, and Mr C believed this was unfair. He also complained that no record was made of discussions between the Planning Department and the applicant.

18. Mr C complained that enquiries in letters he sent to the Council on 27 May 2004, 11 June 2004 and 22 September 2004 were not properly responded to.

19. Mr C's letter of 27 May 2004 detailed his objections to the then-current application. The final paragraph of the letter stated Mr C's wish to appear before the relevant Committee and asked for an assurance that this would be possible. He also asked for a provisional timescale for the Council's consideration of the application.

20. The Council sent Mr C a response to this letter on 28 May 2004. The response stated that the contents of the letter would be reported to the Committee when it met to consider the application. This was a standard response that the Council sent to objectors.

21. Mr C wrote again to the Council on 11 June 2004. This letter was written following Mr C's reading of the Guide. Mr C explained in the letter the reasons why he believed that he, and other applicants, should be given an opportunity to appear at a hearing before the relevant Committee. This letter was responded to on 17 June 2004 with another standard response letter.

22. Mr C wrote to the Council again on 10 August 2004. In this letter, Mr C complained that a standard reply had been sent on 17 June 2004. He explained that, if the 17 June 2004 letter was correct, his request would only be considered when the Committee met and this would not give him reasonable time to prepare for an appearance. This letter was responded to on 13 August 2004 with another standard response letter.

23. A further letter was sent to Mr C on 15 September 2004. This letter, from Officer 1 of the Planning Department, explained that as this application was not considered to be contrary to the Local Development Plan, a hearing was not statutorily required. It went on to explain the other criteria for a hearing to be called. Officer 1 apologised for the delay in this response.

24. Following the submission of the second application to the Council, Mr C wrote again to the Council on 22 September 2004. In this letter he detailed his objections to the second application. In the final paragraph of the letter, he mentioned his wish to appear before the Committee and noted that he was writing again, separately, about this. This letter was responded to on 29 September 2004 with another standard response letter.

25. Mr C continued to correspond with the Council on the issue of whether or not he, and other objectors, would be heard by the Committee.

26. Following the submission of the third application, Mr C wrote to the Council on 6 March 2005 outlining his objections. This letter contained a statement of Mr C's belief that the rights of the objectors had been prejudiced because they believed previous enquiries had not been responded to. This letter was responded to on 7 March 2005 with another standard response letter. Mr C complained about this standard response letter on 10 March 2005 and the Council responded on 24 March 2005.

27. In their letter of 24 March 2005, the Council explained that his letter of 6 March 2005 had been reviewed and that the Council considered the points he raised to be points of objection rather than requests for clarification on factual matters. The Council, therefore, believed it was appropriate for the standard letter to be issued and assured Mr C that his objections would be addressed in the Report.

28. In a letter to Mr C of 11 March 2005, Officer 1 advised Mr C that a separate letter of the same date would address Mr C's concerns that questions he had raised in previous correspondence had not been addressed. Mr C complained that he did not receive this letter within a reasonable time and that, because he did not receive it before the Committee met to determine the application, he was unable to lodge a fully considered objection.

29. Mr C had not received the promised letter by 19 March 2005 and wrote to Officer 1 advising her of this. He wrote again on 28 March and 2 April as he had still not received the letter. Officer 1 acknowledged these letters on 6 April 2005 and promised a response in early course. Mr C wrote again on 15 April 2005 as he had still not received the letter promised in Officer 1's letter of 11 March 2005.

30. The letter was sent to Mr C on 12 May 2005, with a cover letter that apologised for the delay in issuing the letter and explained that the Head of Planning and Building Control (Officer 2) had believed that the letter had been sent previously. Mr C said he received the letter on 20 May 2005. The Committee approved the application at a Committee meeting on 17 May 2005.

31. Mr C believed that he had been prevented from making a considered objection to the planning application because he had not received Officer 2's responses to his enquiries until after the Committee had approved the

application. He complained to Officer 2 about this on 25 May 2005. He also asked how the Council's error in not sending the letter had not been discovered for two months, when the error had been discovered and why the decision-making process had not been put on hold when the error was discovered.

32. Officer 2 responded to Mr C on 15 June 2005. He suggested that the volume of correspondence that the Council had been dealing with from Mr C may have contributed to the confusion as to whether the particular item of correspondence had been issued. Officer 2 explained that Mr C, and other objectors, had had the opportunity to view the plans and background papers submitted with the planning application and that, in his view, the delay in Mr C receiving the letter did not prevent his making a considered opinion. He also explained that the Council did not consider the fact that Mr C had not received the letter to justify the decision-making process being put on hold.

33. Mr C wrote again to Officer 2 on 7 July 2005. In this letter he asked again for an explanation why the error had not been discovered for two months and detail of when the error had been discovered. He also made other points about Officer 2's letter. Officer 2 responded to Mr C on 4 August 2005. He explained that the error had not been discovered until May, and that the letter was sent as soon as the error was discovered.

34. I asked the Council what steps were taken following the receipt of Mr C's letters of 19 March 2005, 28 March 2005, 2 April 2005 and 15 April 2005 to investigate Mr C's claims that the letter of 11 March 2005 had not been sent. The Council told me that the local planning office had received a draft copy of the 11 March 2005 letter and had assumed that it had been sent. This draft copy had been placed on the file and following receipt of each of these letters, the file had been consulted and it was assumed that the letter had been sent.

35. I asked the Council what steps had been taken to ensure that the situation was not repeated. The Council told me that local area offices are now only supplied with finalised copies of such letters once they have been sent from Council headquarters. These finalised copies are then placed on the appropriate file. If a similar situation occurred the local area office staff would be aware that the presence of a draft copy of a letter on a file would not necessarily mean that the letter had been sent.

36. Following receipt of a letter from Officer 1 of 15 September 2004, Mr C responded on 30 September 2004 making several enquiries about the process for granting and undertaking a hearing. Mr C believed that these enquiries were ignored by the Council.

37. Mr C asked what was meant by 'standards' in the context of a sentence in the Guide (see paragraph 21) which read: 'A hearing statutorily requires to be offered where objections are lodged to a proposal where the officer's recommendation is to grant planning consent contrary to the terms of the approved Structure or Local Plan policy or standards.'

38. Mr C asked whether a hearing was to be held as of right in the case of the then-current application. In a response of 9 December 2004, Officer 1 told Mr C that a hearing would only be held as of right if the Planning Department's recommendation was to grant planning permission contrary to the terms of the Structure or Local Development Plan. She explained that, at that point, she was of the opinion that the then-current application was not contrary to any of the policies. On 16 December 2004, a meeting was held between Mr C and a planning officer (Officer 3) to discuss Mr C's concerns and enquiries. At this meeting Officer 3 repeated this response to Mr C.

39. Mr C asked why Officer 1 was of the opinion that the then-current application was not contrary to the Local Development Plan. In a letter of 9 December 2004, Officer 1 explained her view that the then-current application complied with the Local Development Plan in land use terms.

40. Mr C asked if it was considered fair that objectors were only advised of whether or not a discretionary hearing would be granted on the day of the hearing itself. In the letter of 9 December 2004 Officer 1 explained that the Council's policy was that any discretionary decision by a Committee Chairman to grant a hearing had to be ratified by the majority of members present.

41. Mr C asked whether all three of the criteria listed in the Guide had to be met for a discretionary hearing to be granted. The Guide stated that 'requests for hearings will be assessed against the following:

- (a) the majority of Committee members present agree to hold a hearing.
- (b) where, in the view of the Committee Chair, an applicant or objector wishes to present relevant new or additional information to Committee which has not been available previously to officers or Members.

- (c) where, in the view of the Committee Chair, an application has attracted a substantial body of objection and the officer's recommendation is to grant planning consent.'

In her letter of 15 September 2004, Officer 1 had advised Mr C of this. As noted in paragraph 40 above, in the letter of 9 December 2004 Officer 1 explained that the Council's policy was that any discretionary decision by a Committee Chairman to grant a hearing had to be ratified by the majority of members present.

42. Mr C asked whether there were any differences in the administrative arrangements as set out in the Guide for a hearing if it is granted as of right or by discretion. The section of the Guide headed 'Administrative Arrangements' began: 'Where objections are lodged to a proposal where the officer's recommendation is to grant planning consent contrary to the development plan ...' and went on to outline details of how objectors would be notified of the arrangements for the relevant Committee meeting in those circumstances. The following section of the Guide was headed 'Procedure for Hearings' and detailed the arrangements for a hearing.

43. Mr C asked when the Planning Department's decision on whether the application should be granted would be made known to him as an objector. In a letter of 3 November 2004, Officer 1 advised Mr C that the Planning Department's recommendation would be available three working days prior to the Committee meeting date.

44. Mr C asked when the other relevant documentation would be available. In a letter of 3 November 2004, Officer 1 advised Mr C that this would be available three working days prior to the Committee meeting date.

45. Mr C asked when he would be made aware of whether or not he would be heard, and whether this would be by right or by request. In the letter of 15 September 2004, Officer 1 had told Mr C that a hearing would be statutorily held if an application had attracted objections and was recommended to be approved contrary to the Development Plan. She had also made clear to Mr C that, in other circumstances, a decision on whether or not a request for a hearing would be granted would be made at the Committee meeting. As noted in paragraph 43 above, In a letter of 3 November 2004, Officer 1 advised Mr C that the Planning Department's decision on whether the application should be

granted would be available to Mr C three working days prior to the Committee meeting date.

46. In three pieces of correspondence (an email to Officer 3 on 19 December 2004 and letters to Officer 3 on 19 February 2005 and 3 March 2005) Mr C suggested or requested that the decision-making process on the applications should be suspended. Mr C complained that the Council had evaded a direct reply to these comments.

47. Section 36 of the Town and Country Planning (Scotland) Act 1997 states that the Council must make available for inspection by the public at all reasonable hours a register containing applications for planning permission and any plans or drawing submitted with them.

48. In the email of 19 December 2004, Mr C requested that the Planning Department postpone a decision on whether to recommend approval for the then-current application until they had considered a letter Mr C was planning to send them.

49. In the letter of 19 February 2005, Mr C said that he hoped that his concerns over enquiries that he had made and an information request he had submitted could be settled and processed before the final application went before the Committee.

50. In the objection letter of 3 March 2005, Mr C asked the Council to give him an undertaking that the application would not be put before the Committee with any recommendations until he had received a detailed and comprehensive reply to his concerns and had the opportunity to discuss them with Officer 3.

51. Officer 1's letter of 11 March 2005 noted that the plans and supporting documentation had been available to view since the final application was lodged on 8 February 2005 and indicated that the application would be referred to the Committee for a decision.

52. Officer 2's letter of 15 June 2005 gave an example of when the Council may consider delaying the referral of an application to the Committee and explained the Council's view that since, in this case all the plans and background papers had been available to objectors since early February, no delay would have been appropriate.

53. I sought the advice of the Adviser on this point. He told me that he did not consider that the reasons Mr C raised would justify the suspension of the decision-making process.

54. Mr C believed that because two letters, dated 12 May 2005 and 16 May 2005, were not received by him until after the Committee had made its decision to approve the application, he was denied the opportunity to lodge a fully considered objection to the applications. Mr C wrote to Officer 2 to complain about this on 25 May 2005.

55. Officer 2 responded to Mr C on 15 June 2005. He explained that the role of the Council was to ensure that third parties were afforded full access to all of the plans and background papers submitted with a planning application to enable them to lodge any objections or representations they wished. He indicated that he was aware that Mr C felt that his ability to effectively object was restricted because he had not received a response from the Council on certain enquiries that he had made. Officer 2 gave his view that the fact that the response letters had not been received by Mr C before the Committee met to decide the application did not prejudice his input as an objector. Officer 2 explained that this was because the Council did not generally enter into discussions on the merits of any particular application.

56. I sought the advice of the Adviser on this matter. He told me that, in his opinion, the letters Mr C complained that he had received subsequent to the Committee approving the application did not contain any information of material bearing that Mr C had not been previously aware of.

57. Mr C was told that discussions had taken place between the Planning Department and the applicant. An information request was made for copies of any record of those discussions. The Council advised that no record was made of the discussions. Mr C believed that the Council's decision not to make a record of the discussions was unreasonable.

58. The Council supplied me with copies of written correspondence between the Planning Department, the applicant and representatives of the applicant. They had previously supplied copies of this correspondence to Mr C in response to his information request. The Council told me that no file notes of verbal communications had been made.

59. I sought the advice of the Adviser on this matter. He told me that it is usual for applicants to have discussions with the Planning Department and that the recording of these discussions is dependent on the nature of them.

(b) Conclusion

60. The Council did not initially respond to Mr C's enquiries about the hearing process in his letters of 27 May 2004 and 11 June 2004. However, when Mr C had made his dissatisfaction with this clear, the Council did address these enquiries in the letter of 15 September 2004. Mr C complained that similar enquiries had been ignored in subsequent letters of 22 September 2004 and 6 March 2005 (see paragraphs 17 to 27). It is clear from the Council's letter of 24 March 2005 that they considered that these letters raised only points of objection and that the standard responses Mr C received were, therefore, appropriate. Having carefully considered Mr C's letters of 22 September 2004 and 6 March 2005, I have concluded that they mentioned Mr C's earlier enquiries about the hearing process but they did not make further enquiry about them. I, therefore, consider the Council's responses to them to be appropriate.

61. Mr C complained that he did not receive the letter promised in Officer 1's letter of 11 March 2005 until after the application had been approved by the Committee. Mr C believed that this meant he was not able to make an informed objection to the application that would be considered by the Committee (see paragraphs 28 to 35). It is unfortunate that the Council did not realise their error earlier due to Mr C's letters of 19 March 2005, 28 March 2005, 2 April 2005 and 15 April 2005 and either supplied him with the promised letter or advised him that they believed the letter of 11 March 2005 had been sent. However, I do not believe that Mr C, or the other objectors, were in any way hindered in making their objections by not having receipt of the letter.

62. Most of the points that Mr C raised in his letter of 30 September 2004 related to the process for granting and undertaking a hearing were responded to in letters of 3 November 2004 and 9 December 2004 (see paragraphs 36 to 45). In my view, the answers to others were clear with reference to an earlier letter of 15 September 2004 and the Guide. As well as these responses and documents, a meeting was held between Mr C and Officer 3 on 16 December 2004. This meeting gave Mr C the opportunity to clarify any points he wished to, and Mr C's minute of this meeting makes clear that he took

this opportunity. Given all of the above, I do not believe that Mr C's enquiries in his letter of 30 September 2004 were ignored.

63. It is clear that Mr C was concerned that the Planning Department give full and fair consideration to the applications and that he be able to submit a full and comprehensive objection to them and he made various requests (see paragraphs 46 to 53) for the decision-making process to be suspended to ensure this. I have seen no evidence to suggest that the Planning Department did not give proper consideration to the applications and it is also clear that the Council made the plans and background documents available to the public in line with their statutory duties laid out in paragraph 47. Mr C first explicitly requested a suspension of the decision-making process in his letter of 3 March 2005. In my view Officer 1 responded appropriately to this in her letter of 11 March 2005. I also note the Adviser's view that the reasons Mr C gave did not justify the suspension of the decision-making process. Given all of the above, I do not believe that the Council evaded a response to Mr C's request that the decision-making process be suspended, and I believe that their response was appropriate.

64. As noted in paragraph 63 above, the Council complied with their statutory duty to make the application, plans and background documents available to the public. They are not required to enter into any further discussions or correspondence with potential objectors. Given this, I do not agree that the fact that Mr C did not receive responses to certain enquiries until after the Committee had approved the application meant that he was in any way inappropriately prevented from lodging an objection by the Council (see paragraphs 54 to 56).

65. Mr C believed that the Council's decision not to make records of the verbal communications between the applicant and the Planning Department was unreasonable (see paragraphs 57 to 59). The Adviser told me that the recording of such communications was dependent on the nature of them. There is no record of the communications and no evidence of their nature, however, it is clear from the available written correspondence that the communication between the applicant, their representatives and the Planning Department was not inappropriate. On the balance of evidence available, therefore, I have concluded that the Council's decision not to make records of the verbal communication was reasonable.

66. Given all of the above, I do not uphold the complaint.

(b) Recommendation

67. The Ombudsman recommends that the Council apologise to Mr C for not responding appropriately to his point in letters of 19 March 2005, 28 March 2005 and 2 April 2005 advising that he had not received the promised letter of 11 March 2005.

(c) The Council's publication, the Guide, was deficient

68. Mr C believed that there were deficiencies in the Guide. He believed that the use of the terms 'policies' and 'standards' was confusing (see paragraph 37). He also felt the Guide did not make clear whether the section headed 'Criteria' was superior or inferior to the section headed 'Administrative Arrangements'. He also felt that the Guide should have made clear whether all three of the criteria required to be met for a non-statutory hearing to be granted.

69. I asked the Council why the terms 'policies' and 'standards' were both used in the Guide and what their understanding was of the difference between them. The Council told me that 'policies' referred to the adopted policies of the Council, as contained in the Local Development Plans, while 'standards' referred to the supplementary guidance that formed an integral part of the policy framework of the Local Development Plans.

70. The section of the Guide headed 'Criteria' outlined the circumstances in which statutory or non-statutory hearings would be held. The section headed 'Administrative Arrangements' outlined details of how objectors would be notified of the arrangements for the relevant Committee meeting in the event of a statutory hearing being held. The following section of the Guide was headed 'Procedure for Hearings' and detailed the arrangements for both statutory and non-statutory hearings.

71. See paragraph 41 for further detail of the contents of the section of the Guide headed 'Criteria'.

(c) Conclusion

72. The Council have explained the reasons why the terms 'policies' and 'standards' are used in the Guide. In my view, it is clear that the section headed 'Administrative Arrangements' deals with the arrangements prior to a Committee meeting at which a statutory hearing is to be held. The section headed 'Criteria'

lays out the circumstances in which a statutory hearing would be held. Nothing in the sections is contradictory and I believe it is clear, therefore, that neither section is superior or inferior to the other. In relation to how many of the criteria require to be met for a non-statutory hearing to be held, in my view the Guide makes reasonably clear that criteria (a) is required and that criteria (b) and (c) give an indication of how a request for a hearing will be assessed. Given all of the above, therefore, I do not believe that the Guide was deficient and, accordingly, I do not uphold the complaint.

(d) The Council's complaints process was flawed

73. Mr C pursued the Council's complaints procedure in relation to his various complaints about the way the applications and his correspondence had been handled. He believed that the complaints process was flawed because the Chief Executive inappropriately requested a draft reply to a complaint from the subject of that complaint. Mr C also believed that complaint letters to the Chief Executive were unreasonably passed to the Planning Department without proper consideration.

74. Mr C complained to the Chief Executive on 13 March 2005 about a number of issues, including the correspondence between Mr C and others and the Executive Director (Enterprise Resources) (Officer 4) and other Council officers. On 16 March 2005 an Administration Officer, on behalf of the Chief Executive, asked Officer 4 for his comments on the letter.

75. I asked the Council for an indication of how the Chief Executive's response to Mr C's letter of 13 March 2005 was drafted. They told me that the comments from the Council officers of the Planning Department (including those of Officer 4) were scrutinised by an officer within Administration Services to ensure that the points Mr C had raised had been addressed. This officer was satisfied this was the case and drafted a response on behalf of the Chief Executive. This draft was passed to the Administration Manager and the Head of Administration Services for their scrutiny before it was passed to the Chief Executive for his comments and approval. The response was then sent to Mr C on 18 April 2005. In the letter the Chief Executive told Mr C that the Planning Department would respond separately to the issues that Mr C had raised with them that were outstanding.

76. Mr C responded to the Chief Executive's letter on 6 May 2005. In the letter, Mr C told the Chief Executive that he had yet to receive responses to

outstanding issues from the Planning Department which the Chief Executive had referred to.

77. On 11 May 2005 the Corporate Resources Department advised Mr C that the letter had been passed to Officer 2 for a direct reply on the issues Mr C had raised in terms of outstanding correspondence. Mr C believed that the passing of his letter to the Planning Department for a response was unreasonable.

78. I asked the Council why the letter had been passed to the Planning Department for a response. They told me that because the points that Mr C raised were part of an ongoing series of correspondence between Mr C and the Planning Department it was considered more appropriate for the Planning Department to provide a direct response to them. The Council also provided me with a copy of the memo to the Planning Department asking them to respond to Mr C.

(d) Conclusion

79. Mr C believed that Officer 4 was inappropriately asked to draft a reply to his complaint on behalf of the Chief Executive. In my view, it is clear that Officer 4 was asked only for his comments on the complaint and this is entirely appropriate. The only clear complaint raised in Mr C's letter of 6 May 2005 was the issue of the outstanding correspondence. In my view, it was, therefore, reasonable for the Chief Executive to pass this letter to the Planning Department with a suitable note indicating his wish that they respond directly to Mr C on these issues. As well as these particular instances, my examination of the copious correspondence between Mr C and the Council related to the planning applications and his complaints has demonstrated that, with the minor and understandable exception of the actions noted in paragraph 61, the Council corresponded openly, honestly, patiently and courteously with Mr C. Given all of the above, I do not uphold the complaint.

80. 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
The Guide	The Council's publication 'A Guide to the Planning Decision-Making Process'
The Adviser	The Ombudsman's adviser with specialist knowledge in planning matters
The Committee	The Planning Committee
The Report	The Report to the Planning Committee
Officer 1	The Planning Area Manager
Officer 2	The Head of Planning and Building Control
Officer 3	A planning officer
Officer 4	The Executive Director (Enterprise Resources)
NPPG	National Planning Policy Guidelines

List of legislation and policies considered

The Town and Country Planning (Scotland) Act 1997

National Planning Policy Guidelines 18

Historic Scotland Circular 1/1998

East Kilbride and District Local Plan

South Lanarkshire Planning Policies

Detail of and response to objections lodged by Mr C

Objection lodged by Mr C	Plan/Policy/Guidance referred to by Mr C	Paragraph(s) of Report to the Planning Committee addressing
That the division of property into four units and extension would not preserve the building	National Planning Policy Guidelines (NPPG) 18	4.1, 4.3, 4.1, 5.1(d), 5.1(j), 6.3, 6.5
That the building's setting would be destroyed by surrounding new constructions, and this would lead to crowding and the disappearance of garden ground	NPPG 18	4.1, 4.3, 4.8, 4.12, 5.1(c), 5.1(d), 5.1(h), 5.1(j), 6.3, 6.4, 6.5
That the building could continue to be used for its original purpose (a dwelling house located in its own gardens)	NPPG 18	4.3, 4.12, 5.1(d), 5.1(j), 6.2, 6.3
That the proposed development would be detrimental to the established character of the surrounding area (predominantly large dwelling houses with substantial gardens and garages)	NPPG 18	4.1, 5.1(h), 6.2, 6.4
That the views towards the building would be destroyed by crowding smaller houses around it	NPPG18	4.3, 5.1(d), 5.1(h), 6

Objection lodged by Mr C	Plan/Policy/Guidance referred to by Mr C	Paragraph(s) of Report to the Planning Committee addressing
That the building would not remain the focus of the site	Historic Scotland circular 1/1998	4.3, 4.8, 5.1(d), 5.1(j), 6.3, 6.5
That the proposed development would be within the curtilage of the building and would, therefore, affect its setting	Historic Scotland circular 1/1998	4.1, 4.3, 4.8, 4.12, 5.1(c), 5.1(d), 5.1(g), 5.1(h), 5.1(j), 6.3, 6.5
That the proposed development would be unnecessary to ensure the building's future use and survival	East Kilbride and District Local Plan: ENV 10	5.1(d), 6.3, 6.4
That the division of the building, its extension and construction in the surrounding area would have an adverse impact on the amenity and character of the building	East Kilbride and District Local Plan: ENV 10	4.1, 4.3, 4.8, 4.12, 5.1(c), 5.1(d), 5.1(h), 5.1(j), 6.3, 6.4, 6.5
That the proposed plots would be smaller than the typical surrounding plots and would not accord with the established pattern of developments	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Garden Ground	4.1, 4.8, 4.12, 6.2, 6.3, 6.4

Objection lodged by Mr C	Plan/Policy/Guidance referred to by Mr C	Paragraph(s) of Report to the Planning Committee addressing
That vehicular access would be inadequate because the entrance to the grounds would not be adequate for the increase in vehicle use, and trees would be damaged when large lorries entered the site	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Garden Ground	4.1, 4.7, 4.12, 5.1(b), 5.1(k), 6.4, 6.7
That there would be a reduction in privacy for neighbouring houses	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Garden Ground	Not a material planning consideration
That there would be less privacy for the proposed houses than that of the typical surrounding houses	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Garden Ground	Not a material planning consideration
That the proposed development would result in the destruction of an unacceptable number of trees	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Garden Ground	4.2, 4.4, 4.10, 4.12, 5.1(e), 6.2, 6.3, 6.6, 6.8
That the parking provision for the proposed houses would be in spaces rather than garages as was the typical provision in the surrounding plots	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Garden Ground	4.1, 5.1(h), 6.2, 6.4
That the proposed houses would be 'cramped and squeezed in' to the site	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Garden Ground	4.1, 5.1(h), 6.2, 6.4

Objection lodged by Mr C	Plan/Policy/Guidance referred to by Mr C	Paragraph(s) of Report to the Planning Committee addressing
That the general standard of one self-contained dwelling unit per floor would be ignored	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Residential Property	4.1, 4.3, 4.12, 5.1(d), 5.1(j), 6.3, 6.5
That the proposed entrance to the fourth flat would be intrusive	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Residential Property	4.1, 4.3, 4.12, 5.1(d), 5.1(j), 6.3, 6.5
That there had been no assessment of local traffic	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Residential Property	4.1, 4.7, 4.12, 5.1(b), 5.1(f), 5.1(k), 6.4 , 6.7
That the number of trees would be unacceptably reduced to create parking spaces	South Lanarkshire Planning Policies: SLP 6 – Sub-division of Residential Property	4.2, 4.4, 4.10, 4.12, 5.1(e), 6.2, 6.3, 6.6, 6.8
That the external appearance of the building would be adversely affected	South Lanarkshire Planning Policies: SLP 6	4.1, 4.3, 4.12, 5.1(d), 5.1(j), 6.3, 6.5
That the character of the street would be affected by the loss of garden ground and existing trees and plantings	South Lanarkshire Planning Policies: SLP 6	4.1, 4.2, 4.4, 4.10, 4.12, 5.1(e), 5.1(h), 6.2, 6.3, 6.4, 6.6, 6.8
That the application would offer no benefit to the community	None specified	6.8