

Scottish Parliament Region: Central Scotland

Case 200600025: South Lanarkshire Council

Summary of Investigation

Category

Local government: Planning

Overview

The complainant (Mr C) raised a number of concerns regarding the handling of a planning application by South Lanarkshire Council (the Council).

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the letter of 11 July 2005 resulted in unnecessary delay affecting the progression of the application (*not upheld*);
- (b) the terms of the letter dated 11 July 2005 which was issued to Mr C's client were inaccurate (*upheld*);
- (c) the Council failed to register the application which resulted in an unnecessary two-month delay (*not upheld*); and
- (d) the Council failed to issue a letter requesting an extension for dealing with the application as required by statute (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council apologise to Mr C for issuing an inaccurate and misleading letter.

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

Main Investigation Report

Introduction

1. The complainant (Mr C) brought a complaint to the Ombudsman's office on 3 April 2006 regarding South Lanarkshire Council (the Council)'s handling of a planning application. Mr C submitted a planning application, on behalf of his client, on 7 July 2005. On 11 July 2005 the Council wrote to Mr C saying that the application was invalid and that further information was required from Mr C before the Council would register the application. Mr C contested the Council's position and, subsequently, an allegedly unnecessary delay of approximately two months ensued before the application was registered as valid.

2. The Council explained on a number of occasions between 11 July 2005 and 5 September 2005 why they deemed the application to be invalid. Mr C disagreed with the Council's reasoning and entered into correspondence with the Council to challenge their view. The points of complaint stem from the Council's refusal to register the application as valid and their subsequent handling of the application.

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

- (a) the letter of 11 July 2005 resulted in unnecessary delay affecting the progression of the application;
- (b) the terms of the letter dated 11 July 2005 which was issued to Mr C's client were inaccurate;
- (c) the Council failed to register the application which resulted in an unnecessary two month delay; and
- (d) the Council failed to issue a letter requesting an extension for dealing with the application as required by statute.

Investigation

4. In conducting my investigation I obtained evidence from both Mr C and the Council, including the relevant complaints correspondence. I also reviewed the relevant legislation and guidance notes including the Town and Country Planning (General Development Procedure) (Scotland) Order 1992, the Town and Country Planning (Scotland) Act 1997, Circular 6/1992 and the Scottish Government's Planning Advice Note 48 (PAN 48). I also sought the views of the Ombudsman's adviser who has specialist knowledge of planning matters (the Adviser) in relation to this case. I have attached a timeline of key events relating to this case at Annex 2.

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 and the Council were given an opportunity to comment on a draft of this report.

(a) The letter of 11 July 2005 resulted in unnecessary delay affecting the progression of the application (c) The Council failed to register the application which resulted in an unnecessary two-month delay

6. The heads of complaint (a) and (c) are closely related and overlap with regard to a number issues. For that reason I have decided to deal with them both together in the body of the report.

7. Mr C submitted the planning application on 7 July 2005. The Council communicated to Mr C on 11 July 2005 that the application was invalid for the reasons laid out at Annex 2. Mr C stated that, in his opinion, the application was valid and could not be deemed to be invalid for the reasons put forward by the Council. Through correspondence, all of the issues, except that regarding the outlining of land in blue on the application, raised by the Council on 11 July 2005, were resolved by 3 August 2005. The Council accepted that a number of the points raised in their letter of 11 July 2005 would not, in themselves, have made the application invalid. The Council, in providing evidence to me, stated that the points raised on 11 July 2005 were raised to ensure that all the information required for consideration of the application was available when the application became valid. The Council also cited the fact that their own Notes for Guidance in relation to planning applications are based on PAN 48, which provides model application forms and notes for guidance. The guidance states that an applicant should outline other adjoining land to a proposed development site in blue on the application.

8. The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 lists the grounds on which a planning application can be deemed as invalid upon receipt by the planning authority. The Council, in providing evidence to me, accepted that the terms of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 do not specifically insist that an applicant outline adjoining land in blue on the application.

9. Paragraph 10 of PAN 48 stated that although some planning authorities may direct the applicant to provide additional information, some planning

authorities appeared to seek information which was not necessary to determine the application. It stated that only questions essential to the consideration of a development proposal should be asked.

10. The Council have confirmed that their reasoning for requesting that the land owned by Mr C's client be outlined in blue on the plan was to ensure that neighbour notification had been carried out.

(a) and (c) Conclusion

11. These heads of complaint have raised significant challenges for this office in regards to my jurisdiction and the remit of my work as the issues involved in the case are on the borderlines of the Ombudsman's remit in terms of challenging professional judgement and the interpretation of planning law.

12. The Council's decision not to register the application as valid obviously impacted on the time taken to have the application fully processed. The main issue in relation to this point of complaint is whether or not the Council, in deciding not to register the application as valid, acted reasonably. I sought the Adviser's views on this point and the Adviser's comments are summarised below at paragraph 13.

13. The Council have cited the Town and Country Planning Act (1997), part III chapter 32 to justify their actions in requesting further information prior to registering the application as valid. The Council have also made reference to PAN 48 in justifying their actions. The Council, in requesting land on the plan be outlined in blue, have recognised that neighbour notification is a contentious issue and should be commended for this. Furthermore, they have followed the advice laid down in PAN 48 by trying to ensure that land on the application was outlined in blue. The Council should not be faulted for following the government's advice.

14. The evidence shows that the legislation which governs the assessment of planning applications does not require land to be outlined in blue, however, I am conscious of the fact that the guidance issued by the Scottish Government, which stipulates best practice, does make specific reference to land owned by the applicant which adjoins the proposed site being outlined in blue on the application. Therefore, the Council, in refusing to lodge the application as valid in July 2005, have cited the guidance attached to PAN 48 as justification for not registering the application as valid on 7 July 2005. Mr C has claimed that the

guidance attached to PAN 48 does not allow the Council to refuse to register the application. The question as to whether or not they were right to do so is more difficult to answer and, ultimately, is not one for this office to determine. The Council, citing planning legislation, have defended their actions. Mr C has claimed that the Council's interpretation of the planning law is incorrect. It is not for the Ombudsman to interpret planning law, and, therefore, I cannot reach a conclusion as to whether or not the Council's interpretation is a correct one. Such a decision is for a legal court to make. Furthermore, the Council decided to request further information following their consideration of the information available. Their decision to request further information was a discretionary decision which they were entitled to take. I can only question such decisions when I find evidence of service failure or maladministration in the process leading up to a decision being taken. The evidence available does not suggest that the Council's decision was taken improperly. As a result I do not uphold complaints (a) and (c).

(b) The terms of the letter dated 11 July 2005 which was issued to Mr C's client were inaccurate

15. The letter issued on 11 July 2005 stated that the application had been deemed to be invalid for the reasons listed in Annex 2. The Council have accepted that the majority of reasons for refusal to register the application as valid, as listed in the letter of 11 July 2005, would not, in themselves, have invalidated the application. The letter, which was copied to Mr C's client, does not specify any distinction between the reasons for refusing to accept the application as valid and requests for further information. As a result, the letter appears to state that the application was invalid for five separate reasons. The Council have accepted that the letter in question was inaccurate.

(b) Conclusion

16. The letter stated that the application was invalid and provided a list of points to be addressed by Mr C before the application could be validated by the Council. The letter, in failing to distinguish the difference between the further information being requested, and the reasons as to why the application was invalid, was, in my opinion, inaccurate and misleading. Therefore, I uphold this complaint.

(b) Recommendation

17. I recommend that the Council apologise to Mr C for issuing an inaccurate and misleading letter.

(d) The Council failed to issue a letter requesting an extension for dealing with the application as required by statute

18. The Council have accepted that they failed to request an extension to the statutory period and have already apologised to Mr C for this failure. The Council have indicated that the failure was a result of staff vacancies and a restructuring of the department which was underway at the time.

(d) Conclusions

19. It is the normal practice of the Ombudsman not to uphold a complaint where the authority has admitted fault and explained the reasons for the fault prior to the Ombudsman's involvement in the case. Given the circumstances in relation to this point of complaint, I do not uphold this complaint.

20. The Council have accepted the recommendations. The Ombudsman request that the Council notify her when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
The Council	South Lanarkshire Council
PAN 48	The Scottish Government's Planning Advice Note 48
The Adviser	The Ombudsman's adviser with specialist knowledge of planning matters

Chronology of events

<i>Date</i>	<i>Description</i>
7 July 2005	Mr C submitted the planning application to the Council
11 July 2005	<p>The application was deemed to be invalid and was not registered for the following reasons:</p> <ul style="list-style-type: none">• the Council had amended the description of the proposed works. Mr C was to confirm whether or not he accepted the revised description;• the Council required that the land adjoining the development site which was owned by Mr C's client was outlined in blue in the application;• scaled drawings showing the existing layout of the site were requested by the Council;• clarification as to how the proposed development related to the adjacent steading was requested by the Council;• the Council requested that Mr C confirmed that additional floor space would be provided as a result of the proposed development
20 July 2005	Mr C challenged the Council's decision not to register the application as valid
25 July 2005	The Council explained to Mr C the application was deemed to be invalid

27 July 2005

Mr C confirmed that he accepted the revised description of the development and provided copies of a drawing

3 August 2005

The Council repeated their request that the adjoining land owned by Mr C's client was outlined in blue on the application

5 September 2005

The application was registered as valid although the site had still not been outlined in blue on the application

List of legislation and policies considered

The Town and Country Planning (General Development Procedure) (Scotland) Order 1992

The Town and Country Planning (Scotland) Act 1997

Circular 6/1992

Planning Advice Note 48