

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200603329: Fife Council

#### Summary of Investigation

##### **Category**

Local government: Planning, other

##### **Overview**

The complainant (Mr C) lived adjacent to a hotel (the Hotel), which received planning consent for an extension. During the construction of this extension, Mr C raised a number of concerns about the access to the site by contractors by way of a private road that was granted by Fife Council (the Council).

##### **Specific complaints and conclusions**

The complaints which have been investigated are that the Council:

- (a) did not adequately monitor access to a development site (*upheld*); and
- (b) did not communicate adequately with Mr C over this matter (*upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council apologise to Mr C for any added distress and inconvenience caused by insufficient monitoring of a contractors' use of a private access road and for shortcomings in their communications over this matter.

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

## **Main Investigation Report**

### **Introduction**

1. Fife Council (the Council) registered an application for an extension to a hotel (the Hotel) on 10 March 2006. The extension would provide the Hotel with 29 additional bedrooms. The complainant (Mr C) lived in a property which was adjacent to the Hotel and close to the proposed extension. He had concerns that his privacy would be compromised and raised these when he first heard of the proposal in February 2006. Following amendments to the proposal, he submitted a letter of objection on 25 August 2006 on the grounds that the amendments did not address his concerns. Permission was granted for the development on 8 September 2006 and the notification of this decision was sent to Mr C, as an objector, on 20 September 2006.

2. On 9 November 2006, Mr C complained to the Council that his objections had not been included in the committee report and that he had not been duly notified of the decision. The Council responded to these matters on 8 January 2007, saying that there had been an explicable delay in the issuing of the usual notification to interested parties and that, although Mr C's letter was not specifically noted, his material concerns about overlooking had been explicitly addressed in the report. These complaints were not included in my investigation.

3. Mr C wrote to the Council again on 12 February 2007 to complain that contractors were using the private access road to his property to gain access to the development site without notifying residents. He pointed out that the residents were responsible for the upkeep of that road. He and his constituency MP (the MP) then engaged in a protracted correspondence with the Council over access to the site.

4. The complaints from Mr C which I have investigated are that the Council:

- (a) did not adequately monitor access to a development site; and
- (b) did not communicate adequately with Mr C over this matter.

### **Investigation**

5. To investigate this complaint, I have reviewed correspondence between the parties and relevant planning documentation relating to the site. I made inquiry of the Council on 21 February 2008 and received their response on 1 April 2008.

6. 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 Council did not adequately monitor access to a development site; and (b) The Council did not communicate adequately with Mr C over this matter**

7. When Mr C wrote to the Council on 12 February 2007, he noted that they had a legal right of access to their nursery by means of a private road owned and maintained by the residents of the development where he lived. The Council had granted the contractors temporary access to the Hotel by this private road. Mr C's primary concern was that the use of the road by heavy vehicles involved in the construction may cause damage for which residents may then be liable.

8. The Council wrote to Mr C on 26 February to address his concerns. They apologised for a delay in responding to him and said that they had been in direct contact with the contractors, who had given assurances that the vehicles would not require many visits to the site. The Council asked the contractors to confirm their intended use of the access road in writing to the residents and to give written reassurance that they would repair any damage caused. They also suggested that the contractors take photographs of the access road before and after they had used it in order to establish the extent of any damage. Mr C reported to me that the contractors did not contact residents over the course of the construction and that they had gained further access to the site without reference to them. He also stated that the Council did not make contact with him after their letter of 26 February 2007.

9. At the same time as responding to Mr C's correspondence, the Council were in touch with the MP over this same issue. In a letter to the MP on 11 June 2007, the Council admitted that further access had, indeed, been gained by the contractors due to a misunderstanding between the Council and their tenant who lived at the site. Although the Council stated that they were under no restrictions in terms of permitting temporary access to others, they noted that steps had been taken to prevent a recurrence and that they would not grant access of this nature in the future. They recognised that the access gained by the contractors had caused difficulties for residents.

*(a) Conclusion*

10. It is clear that the Council gave permission for the contractors to use the private access road that ran past Mr C's property and that it was within their power to allow such access. The Council's right to allow access has not been questioned in this complaint. It is also clear that the Council recognised the negative impact this may have on residents and negotiated with the contractors to take action to mitigate this. However, there is no evidence that the contractors took the action they agreed to take and the Council acknowledged that this caused concerns for residents. Furthermore, the Council's decision not to allow third party access of this sort in the future suggests that they were aware of the issues created by such an arrangement.

11. In the circumstances, it seems to have been reasonable for the Council to allow access to the site via the private road and they did take reasonable steps to make the contractors aware of Mr C's concerns. I am conscious that the Council described their actions in brokering agreements with the contractors as those of a 'good neighbour' and that they had no obligations with respect to the access granted to the contractors. However, given the nature and extent of Mr C's concerns, it would also be reasonable to expect the Council to monitor the implementation of the measures agreed with the contractors. From the evidence I have seen, although the Council were responsive to concerns expressed from Mr C and the MP, it is possible that they could have done more to ensure that the contractors were using the access they had been granted to the site responsibly and in keeping with the agreements. To that extent, I uphold this complaint.

*(a) Recommendation*

12. The Council have already decided not to allow access of this sort in future. Therefore, the Ombudsman makes no recommendations in respect of this issue. The Ombudsman does, however, recommend that the Council apologise to Mr C for any added distress and inconvenience caused by insufficient monitoring of the contractors' use of the private road.

*(b) Conclusion*

13. The Council responded carefully to Mr C's original concerns. In paragraph 8, I noted that Mr C said that he did not hear from the Council after their letter to him of 26 February 2007, despite the ongoing issues over the use of the private road. Although the Council were in correspondence with the MP, and Mr C saw copies of letters that were exchanged, it does not appear that the

Council consulted directly with residents over the access granted to the contractors. In addition, the Council also acknowledged communication difficulties with their tenant which contributed to unauthorised use of the private road by the contractors. On balance, I conclude that there were flaws in the Council's communication over the use of this road and uphold this complaint.

*(b) Recommendation*

14. The Ombudsman recommends that the Council apologise to Mr C for shortcomings in their communication with him.

15. 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**

The Council

Fife Council

The Hotel

A hotel adjacent to Mr C's property which was extended following the grant of planning permission

Mr C

The complainant

The MP

The MP in whose constituency the Hotel was situated