

## Scottish Parliament Region: South of Scotland

### Case 200700100: South Ayrshire Council

#### Summary of Investigation

##### **Category**

Local government: Planning

##### **Overview**

Three complainants (Mr A, Mr B and Mr C) raised a number of issues regarding South Ayrshire Council (the Council)'s handling of a planning application for the erection of a telecommunications mast and associated equipment in a street near their homes.

##### **Specific complaint and conclusion**

The complaints which have been investigated are that the Council:

- (a) provided the Planning Committee (the Committee) and objectors with inaccurate information on a planning application for the erection of a telecommunications mast and associated equipment in a street near the complainants' homes (*partially upheld*); and
- (b) failed to take appropriate steps to ensure that the telecommunications mast and associated equipment erected by the applicants complied with planning consent (*not upheld*).

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

The Ombudsman recommends that the Council:

- (i) apologise to the complainants for providing the Committee with inaccurate information on the planning application;
- (ii) ensure that, in future, more thorough checks are made on documentation for planning applications to ensure that those documents which are current and those which are superseded are clearly identified; and
- (iii) ensure that, in future, planning reports to Committee contain information on the history of the application, comparing the original scheme with the final proposal and outlining any significant changes which have been made.

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

## **Main Investigation Report**

### **Introduction**

1. In April 2007 the Ombudsman received three separate complaints about South Ayrshire Council (the Council)'s handling of a planning application for the construction of a telecommunications mast and associated equipment in a residential area. The complainants, Mr A, Mr B and Mr C, whom, for ease of reference, I shall refer to as 'the complainants', complained that the Council provided incorrect information on the application which misled them and the Planning Committee (the Committee) and that the Council failed to monitor compliance with planning procedures. The complainants were particularly concerned that the mast was not 'slimline'; that the Council's presentation of a photomontage of the telecommunications mast at the Committee was misleading; and that the Council did not issue a stop notice when they became aware that the structure erected was incorrect, in terms of type and location.

2. The complainants also said that the Council had failed to ensure that the applicants had discounted alternative sites for the mast or that details of the colour of the mast and associated equipment had been submitted to the Council for approval, prior to work commencing on the site. They said that the mast erected contained antennae for 3G and 2G systems (see Annex 2) plus the facility for a further antennae dish, but what had originally been proposed was a slimmer mast with antennae for only a 3G system. The complainants, additionally, advised that as a result of the above failings by the Council, there now existed conflicting views within the Council as to whether or not two separate planning applications for the construction of the telecommunications mast and equipment, one dated 2004 and the other 2006, complied with the Finalised South Ayrshire Local Plan (the Local Plan).

3. The complainants all said that they felt that the mast was an eyesore, resembled an industrial chimney and did not blend in with the existing street furniture as it was supposed to. Mr A advised that the mast was positioned right outside the fence of his back garden and could be seen from the rooms at the back of his house. Mr B complained that when he looked out the window at the front of his house he could see the structure and Mr C advised that the mast looked directly down into the rear/side of his house and his garden.

4. After making initial enquiries of the Council on the main complaints, I decided to formally investigate the complaint that the Council failed to take

appropriate steps to ensure that a telecommunications mast and associated equipment erected by the applicants complied with planning consent. On the basis of the information provided by the Council, it was decided that the issue of the Council allegedly misleading the complainants and the Committee did not require investigation and I explained that to the complainants.

5. However, as the investigation progressed, I identified issues concerning the accuracy of the information provided to the Committee. I, therefore, informed the Council and the complainants that the investigation would additionally consider the complaint that:

- (a) the Council provided the Committee and objectors with inaccurate information on a planning application for the erection of a telecommunications mast and associated equipment in a street near the complainants' homes.

#### *Background*

6. On 13 August 2004 the applicants submitted a planning application to the Council for the installation of a 10 metre 'slimline flexicell 2 street furniture column, along with associated equipment cabinet, for telecommunications purposes', along with related drawings and a photomontage giving a representation of the structure as it would appear on site. The Council advised that, on 11 October 2004, as a result of the large volume of objections to this proposed application, including objections from the complainants, the applicants submitted amended drawings depicting a 10 metre flexicell 2 type 5 column, electrical meter cabinet and street furniture cabinet. On 27 October 2004, the Council wrote to the objectors, including the complainants, notifying them that amended plans had been received 'to replace the current proposal with a slimline telecommunications mast' and that the plans were available for inspection at the planning office. In their letter, the Council explained 'if you wish your letter of objection to still stand, you need take no further action and I shall report your objections to [the Committee] with my report on this application in due course'.

7. The planning officer's report on the application went before the Committee on 14 December 2004. The report sought permission for the installation of a telecommunications mast, associated equipment cabinet and electrical meter cabinet. The report stated that 'the proposed monopole mast' would be 10 metres high, in the form of a 'slimline column' and would be grey to match existing street furniture. The report recommended that the Committee approve

the application subject to a number of conditions, including 'that, notwithstanding the plans hereby approved, the telecommunications mast shall be a 'Flexicell 2 Type 5' mast, to the satisfaction of the Planning Authority'. The records show that the Committee approved the application. The mast was erected in November 2005.

### **Investigation**

8. My investigation of this complaint involved reviewing the documentation provide by the complainants, making enquiries of the Council and assessing their responses and documentation provided and making enquiries of Mr A and Mr B. I additionally considered Planning Advice Notes, PAN 54 Planning Enforcement (PAN 54) and PAN 62 Radio Telecommunications (PAN 62), National Planning Policy Guideline NPPG 19 Radio Telecommunications (NPPG 19) and I also sought the opinion of the Ombudsman's planning adviser (the Adviser) on the complaint.

9. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. In order to ensure consistency, in any references to 'plans' or 'drawings' for the planning applications made by the organisations named in this report, the documents are referred to as the 'plans' for the applications. Mr A, Mr B, Mr C and the Council were given an opportunity to comment on a draft of this report.

**(a) The Council provided the Planning Committee and objectors with inaccurate information on a planning application for the erection of a telecommunications mast and associated equipment in a street near the complainants' homes; and (b) the Council failed to take appropriate steps to ensure that a telecommunications mast and associated equipment erected by the applicants complied with planning consent**

10. The documentation obtained during my enquiries showed that in early December 2005 the Council received complaints from local residents, including Mr A, Mr B and Mr C, about the location and type of mast erected by the applicants. They complained that the mast had been erected in the wrong location, was not 'slimline' and did not have the appearance of the mast in the photomontage shown to objectors and the Committee. Discussions subsequently took place between the applicants and the Council about these issues. This resulted in the Council sending a letter to the applicants on 8 December 2005 stating that the mast did not comply with planning permission in that it was not 'a slimline mast' and it was erected in the 'wrong location'. The

Council advised the applicants to remove the mast or submit a formal application for the mast as erected.

11. In their response of 20 December 2005, the applicants stated 'the mast deployed is exactly what was proposed in the drawings stamped by [the Council] on 13 August 2005 (sic 2004) and attached to the planning certificate'. The applicants asked to meet the Council on site to discuss the matter. In further correspondence, and after a joint site visit on 6 January 2006, the applicants continued to dispute that the location and type of mast were incorrect. They advised 'the mast erected is a 10 m[etre] Flexicell 2 Type 5, which was specially constructed for this site. On site it was claimed [by the Council] that the column didn't look like the one shown in the photomontage, which is true, however that photomontage was for the original proposed design scheme which was superseded by the amended drawings submitted by [the applicants] on 11 October 2004. The pole diameter is annotated on the approved plans, and that measurement is accurate'. On 12 January 2005 the Council responded reiterating that the mast was in the wrong location and stating that the mast did not accord with the approved drawings as represented by the mast superimposed on the submitted photograph.

12. The Council have advised that after carrying out measurements of the dimensions of the mast and its location they reached the conclusion that the type of mast erected was of the dimensions as specified in the approved drawings but that the location of the mast did not have valid planning permission. They said that they had initially made a mistake in their assessment of the mast and that their letter of 8 December 2005 contained an erroneous statement about the type of mast. The Council were unable to provide any documentation to verify when they reached the view that the mast itself had consent, ie when they realised they were wrong to say it was not the type approved, but explained that in January 2006, when the applicants submitted an application for retrospective planning permission for the mast as erected, they put the matter on hold pending the outcome of the application. It is noted that in the supplementary information provided with the applicants' 2006 retrospective application, the applicants stated that the Council believed that the mast deployed was 'not the correct item' and that they claimed that the column did 'not look similar to the one shown in the photomontage'.

13. On 17 February 2006 the Council wrote to the applicants on the issue of the type of mast and its position and also sought further information on the

applicants' retrospective planning application which was under consideration. The Council asked the applicants to confirm if the mast had been made operational, contrary to their previous advice. They asked why the mast erected did not have the appearance of the one shown in the photomontage, which was 'in the form of street lampposts'. The Council said that due to public concern about the original 2004 drawings, the applicants had indicated that a slimline mast would be more appropriate and had described the flexicell 2 type 5 mast as a slimline mast. The Council explained that, in granting planning permission for the mast, they had been mindful of the impression given by the applicant that the mast to be erected would be 'slimline' and commented that when the applicant had submitted the amended design of mast the applicant had referred to the mast as being 'slimline'. The Council said that, having met the applicants on site, they were still 'not satisfied that the mast which [had] been erected [was] slimline as it [had] a large girth of 0.9 metres at the base'. They asked the applicants to provide information on other slimline masts available and an explanation of why the applicants could not erect a 'slimmer type of mast' similar in appearance to existing lampposts. The Council also asked the applicants to provide information on alternative sites available for the mast in that area.

14. On 28 February 2006 the applicants responded arguing that, in their view, they did have valid planning permission for the installation on site and, therefore, did not see any reason why they should not activate the installation. They explained that the mast erected was as shown on the plans submitted to the Council on 11 October 2004 and that the original photomontage should have been superseded when the amended plans were received. They explained that the reason for the difference in the masts was that the original proposed column was a Flexicell 2 column with column base diameter of 273 millimetres reducing to 219 millimetres then increasing to the shroud with a 380 millimetres diameter. They said the amended design which had been granted permission was for a mast of 10 metres in height with a column base of 273 millimetres and a shroud diameter of 325 millimetres. The applicants said this was the slimmest mast they had for the site and that alternative site information had already been provided to the Council with the 2004 and 2006 applications.

#### *Application History*

15. A copy of the amended drawings and the original photomontage for the 2004 application supplied to this office by the Council were date-stamped as being approved subject to conditions on 14 December 2004. The scale

drawings, entitled 'General Arrangement Details for Flexicell 2 Type 5 Range', showed flexicell 2 type 5 masts with an overall height of 12.5 metres and 15 metres, 273 millimetres wide for most of their height, with a 325 millimetres wide shroud at the top. The elevation drawing showed the mast as being 10 metres in height and was first issued on 2 August 2004 and later revised on 8 October 2004 when the 'column changed to a flexicell 2 type 5'. The Council also provided supplementary documentation submitted by the applicants with the 2004 application, in which the applicants stated that they had discounted five named sites and various other positions on the roadside pavements within the surrounding residential area.

16. Mr B and Mr C have advised that they telephoned the Council in response to the letter of 27 October 2004, in which they were notified of the amended plans, and enquired about the extent of the amendments. They said that they were told that there was no change to the style of mast and so decided not to visit the Council offices to view the amended plans. When questioned, the Council explained that they did not have notes of the conversation with Mr B and Mr C but said that they had both telephoned the Council on a number of occasions throughout the planning application process to query a number of issues. They said that their recollection was that a number of members of the public visited Council offices to view the amended plans.

17. In their 2004 report to Committee, the Council listed reasons for objection as including 'unsightly visual impact of the mast' and 'consideration of alternative sites not being satisfactory'. The report stated that 'siting and design issues' were addressed by the applicants in their submission and that no suitable alternative options were available. They also noted that the monopole was higher than existing lampposts, but that its structure was of a similar appearance. The report stated that the Council did not consider that the points of objection outweighed the proposal's compliance with the Development Plan and having assessed the proposal and balanced the applicants' rights against the general interest, they recommended that the application be approved subject to conditions. These included that 'prior to works commencing on site, details of the colour of the mast and equipment housing shall be submitted to [be] approved in writing by the Planning Authority'.

18. The planning officer's report to Committee on the retrospective planning application, dated 21 March 2006, recommended that the application for the mast and associated equipment at the existing site be approved subject to

conditions. The report contained an account of the planning history of the application. It explained that during the planning process for the 2004 application, as there had been considerable opposition to the proposed mast, the applicants decided to submit an amended scheme 'with a flexicell 2 type 5 mast to reduce the width of the proposed mast'. They said that the applicants advised that the new mast would be more slimline than the original and that planning permission was duly granted, with a condition that the mast should be a flexicell 2 type 5 mast. In their response to complaints about the erected mast, the Council said they noted that the mast had been erected in the wrong position and that the mast did not 'have the appearance of the mast as shown on the photomontage submitted with the planning application shown to [the Committee]'. The Council noted 'the applicants now advise that the photomontage should have been superseded, however they did not advise that this was the case at the time and they did not submit an amended photomontage showing the flexicell 2 type 5 mast'.

19. In the report, the Council said 'the elevation drawings submitted by the applicants with the amended scheme show a design of mast which is similar to the mast erected on site' but added 'it is evident that there are discrepancies between the amended elevation drawings and the submitted photomontage'. The Council went on to specify the differences in the measurements in the original and amended drawings and concluded that the amended mast was slimmer at the top than the original by some 55 millimetres but was wider in the middle by some 54 millimetres. They said 'In December 2005 and January 2006 discussions took place with the applicants about the type of mast which had been erected and its position ... The applicants confirmed that the mast, which had been erected, was indeed a flexicell 2 type 5 mast. The applicants were unwilling to move the mast to its correct position but accepted that the drawings they had submitted had discrepancies and eventually agreed to submit a retrospective planning application'. The 2006 application was subsequently refused by the Committee. One of the reasons for refusal was that insufficient evidence had been submitted in relation to discounted alternative sites.

20. On 23 March 2006 the Council advised the applicants that the mast and associated equipment were unauthorised and a timescale for removal was requested. The applicants indicated that an appeal would be submitted in respect of the refusal of planning permission and in the absence of a commitment to remove the equipment, the Council issued an Enforcement



Notice on 25 May 2006, to take effect on 5 July 2006, specifying a six week compliance period. The Council stated that this was served on the applicants on 30 May 2006. The applicants submitted an appeal to the Scottish Executive<sup>1</sup> Inquiry Reporters Unit in August 2006.

21. The appeal was heard by a Reporter of the Scottish Executive Inquiry Reporters Unit (the Reporter) on 6 December 2006. The Council have advised that as the Council had taken the decision to refuse the 2006 application contrary to the recommendations of their planning officers, it was therefore not possible for the Council to use their own planning officers to defend the Council's position at the appeal to the Reporter as this would have been contrary to the Royal Town Planning Institute's Code of Conduct. The Council, therefore, appointed planning consultants (the Consultants) to deal with the planning appeal.

22. The Statement of Observations submitted by the Consultants to the Reporter, on behalf the Council, stated that local residents complained to the Council that 'the mast had been erected over 4 metres away from the approved location and did not have the appearance of the mast in the photomontage'. The Consultants said that the form of the mast was 'of an engineered structure that would be more appropriately located in an industrial or commercial location'. The Consultants noted that after taking steps to try to prevent the applicants from making the mast operational, discussions subsequently took place with the applicants about the type of mast and its position. Having assessed the mast and associated equipment against the relevant planning policies in the Development Plan and national policy and advice, the Consultants concluded that the planning proposal was contrary to some policies contained in the Local Plan and failed to meet the requirements of NPPG 19 and advice in PAN 62.

23. They also stated that the mast 'is not consistent with the approved photomontage because, when amended plans were submitted to the Council for [the 2004 application], these did not include a replacement photomontage. It is not clear whether the applicants considered that the original photomontage

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<sup>1</sup> now the Department of Planning and Environmental Appeals (DPEA). 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.

suitably depicted the new type of mast or if this was simply an oversight. However, this point is significant in that the photomontage as submitted was displayed at the Committee at the time [the 2004 application] was determined and, therefore, members did not have an accurate impression of the development upon which they were making a decision at that time. The Consultants went on to note 'the combination of a wider diameter mast being erected 4 m[etres] away from the approved position at a higher ground level increases the visual impact of the mast over a wider area ...'. The Consultants, therefore, requested that the Reporter refuse the appeal and uphold the enforcement notice that had been served. [I will deal with the outcome later.]

24. During my enquiries the Council explained that there was 'a contradiction between [the Consultants] submissions and the Council's understanding about the status of the photomontage as tabled at [the Committee]'. They said 'the superseded photomontage was taken to Committee by the then Development Control Manager with the amended drawings and he reported at that meeting that this photomontage was for the original scheme. [The Consultants] were not appointed by the Council until 2006 to defend the Council's position at the appeal into the 2006 application and would not be fully aware of what was presented at [the Committee] in 2004'. They explained 'the handwritten notes of the Development Control Manager on his copy of the Committee report clearly indicates the basis on which the photomontage was considered at Committee ie it related to the original scheme'. The Council provided a copy of this document and on the front page handwritten notes included 'photo – orig. proposal, amends = new mast, all objs notified on 27/10 of amended proposal'. The Council indicated there is no requirement to submit a photomontage as part of a planning application. However, it is noted that paragraph 61 of NPPG 19 states that, in some circumstances, further information on the visual impact of the radio telecommunications development should be provided with the application to the Council, 'eg a photomontage to show the proposed equipment in its wider setting'.

25. When questioned further, the Council explained that it was their normal custom and practice for the drawings relating to all applications being considered by the Committee to be available at the Committee meeting and that members know that they can ask to see such plans either before the meeting or at the time when the application is being considered. Initially, they said that the amended drawings were shown to the Committee at the hearing but later said they had no record of whether the members specifically asked to see the

drawings or not at the meeting. Mr B and Mr C, who attended the hearing, have indicated that 'at no time [during the meeting] were [the Committee] presented with copies of the amended drawings'. The Council stated that the minute of the meeting showed that the Councillors considered whether or not the mast should be erected and did not make any mention of the appearance or dimensions of the mast. Although a copy of the minute showed this to be the case, it is noted that the minute is not intended to be a verbatim record of the discussions at Committee. The Council admitted that the photomontage presented at the meeting should not have been stamped as being approved as it related to the original application and not the revised one and they had, therefore, made an error in this respect.

26. In their final comments on the role of the Consultants, the Council explained 'no discussions took place between Council planning officers and [the Consultants] on aspects of the two planning applications. However the agents had full access to the documentation pertaining to the applications in order for them to prepare their evidence for the appeal'. The Council added 'I have ... checked [the Consultants] statement of observations and can find no reference to the type of mast being incorrect'.

*Consideration by and Conclusions of the Reporter*

27. In his report on the appeal, the Reporter noted 'The suggestion has been made that both the public and elected members were misled about the visual impact of the mast, for which planning permission was granted in 2004, by inaccurate photomontage, which depicted the design of the mast originally submitted with that application and not the one that was eventually approved. I find little merit in this argument. It should be apparent, at least to the Council's professional planning officers that a photomontage was intended solely as an aid to the visualisation of a proposal, and that consideration of the dimensions of the mast must depend on the submitted drawings. In this case, there is no evidence before me to suggest that [the applicants] were asked to supply a revised photomontage with the amended plans, and the responsibility for putting a superseded photomontage before the Committee must rest with the Council. I note from the [2006] Committee report that the planning officer considered the amended drawings show a design of mast similar to that which has now been erected on the site; a view with which I concur. No evidence has been submitted to indicate that the height of the mast exceeds 10 metres and from my measurements of the circumference of the base of the mast I was able to calculate that its diameter is 273 millimetres, as shown on the approved plans'.

28. The Reporter continued 'From the information contained with the submission I understand that the original proposal put forward by your client was for a 10 metre high mast with a diameter of 273 millimetres at the base, reducing to 219 millimetres in the middle and with an antenna shroud of 380 millimetres diameter. It would thus have been narrower in the middle section than the present mast but wider at the top. It has been questioned why the existing mast, which is wider over a significant part of its length, should have been considered acceptable, whereas the earlier proposal was deemed not so, but that is not a matter for me to consider. The fact remains that planning permission has been granted for the erection of the mast of the same dimensions as the one that has been erected'. He went on to note that the applicants had accepted that the mast had not been erected in the location on the approved plans.

29. The Reporter, in considering the compliance of the structure as erected against relevant planning provisions, noted that it did not comply with policies contained in the Local Plan and failed to fully accord with the advice in paragraphs 32 and 33 of PAN 62. He said 'the approved location for the mast would provide some small, but nonetheless worthwhile improvement in the visual impact of the development compared to the present situation' and concluded that, in light of the above non-compliances with planning policies and advice, planning permission should not have been granted for the mast that had been erected and the appeal, therefore, failed. He added 'Your client, however, is entitled to implement the planning permission granted on 14 December 2004, and to relocate the mast accordingly ... The fact is that planning permission exists for the erection of the mast [as per the 2004 application] and my decision on this appeal does not alter that decision'. The Reporter dismissed the appeal and directed that the enforcement notice dated 25 May 2006 be upheld and refused to grant planning permission for the development to which the notice related.

30. Following this decision, the Council wrote to the applicants on 15 December 2006 advising that the requirement of the Enforcement Notice, ie the removal of the telecommunications mast and associated equipment, should now be complied with and that the deadline for compliance was 17 January 2007.

31. The Council have confirmed that the site was inspected on a number of occasions when work was in progress to relocate the mast and that the mast and the grey street furniture cabinet were removed by the deadline specified. The complainants, however, are strongly of the opinion that the equipment was not removed by the required date. When questioned further, the Council produced a telephone note of 31 January 2007 which summarised a conversation between Mr C and the Council, in which it is noted that the mast and grey cabinet had been moved. The Council also confirmed that the underground cables had to be rediverted in order for the relocation to take place and, whilst aware that the pavement was dug up to relocate the mast and associated equipment, they had no information as to whether all the cabling was still in place. The Council noted 'whilst the mast and associated cabinets require planning permission the location and the amount of cabling does not require the benefit of planning permission'.

32. The Council records show that on 14 February 2007 they wrote to the applicants noting that the green electrical meter cabinet had not been moved and asked why this was the case.

33. On 22 February 2007 the applicants responded, explaining that the cabinet was an electrical meter cabinet provided by the regional electricity company and that as such they were not permitted to move the cabinet as it had to be installed and relocated by the regional electricity company or its contractors. They gave an estimate of one month for removal of the cabinet. They noted 'the main issue on this site was ... the siting of the column rather than the cabinet' and pointed out that they had carried out all the work which was within their control. They said 'the cabinet is identical to many similar control cabinets installed by electricity and other utility companies without the need for planning permission' and asked that the Council exercise discretion and allow more time for the cabinet to be relocated. The Council advised that they considered the proposed timescale to be reasonable.

34. The Council stated that they subsequently noted that the green cabinet had not been removed and on 31 May 2007 they emailed the applicants to ask what steps had been taken to remove the green cabinet. The applicants emailed the Council on 1 June 2007 to advise that the green cabinet had been disconnected and they would be likely to move it within the next two weeks. This was followed by a further email confirming that the cabinet would be

moved by 19 June 2007. The Council said that on inspection on site on 6 June 2007, Council officers noted that the cabinet had been removed.

35. When questioned, the Council did not explain why they waited until 14 February 2007 to contact the applicants regarding the 17 January deadline for removal of the green cabinet or why they waited until 31 May 2007 to chase the applicants regarding the revised deadline of 22 March 2007.

36. The Council verified that one of the conditions of planning consent for the 2004 application was that the applicants were required to submit details of the colour of the mast and associated equipment cabinets prior to commencing work. The Council acknowledged that the applicants did not do so and noted that it is the responsibility of an applicant, who has received planning consent, to discharge any and all conditions imposed by the local planning authority relating to that consent. They explained that if an applicant chose not to do so then the authority could use its enforcement powers to address any breach of conditions. They explained that as the planning system was not punitive, if an applicant, as in this case, went ahead and erected a development the terms of which was later deemed acceptable to the local planning authority without formal discharging of the conditions then the authority had no basis on which to take action.

#### *Adviser's View*

37. I subsequently discussed the complaint with the Adviser and he confirmed that the stamped drawings provided by the Council for the 2004 application were adequate. He said that the condition for the 2004 planning consent contained in paragraph 4 of the 2004 report suggested that the Council would be required to satisfy themselves that the mast erected was of the type shown in the scale drawings and of the height shown in the elevation drawing approved by the Committee. He said that the scale drawings showed masts with two sets of antennae and an optional dish. He explained that, in his view, a 'monopole' mast was a solid pole mast and that there was no formal definition of what would constitute a 'slimline mast'. The Adviser said that the key issue in this case was that the structure erected by the applicants should comply with the approved drawings. He said that the photomontage was simply an aid to visualisation of the proposed structure. However, he added that the two should be consistent, otherwise the photomontage would be misleading. The Adviser also noted that the 2004 report did not provide any information on the changes to the proposals in the application since its registration. He explained that it

would have been good practice to do so and, in particular, to have included details on the differences in the dimensions of the mast as stated in the original and amended plans.

38. On the issue of discounted alternative sites, the Adviser explained that PAN 62 contained good practice advice but was not planning policy. He said it would be at the Council's discretion to adopt a PAN. The Adviser agreed that the wording of the parts of PAN 62 which referred to mast sharing and site sharing (see Annex 3) were also quite vague. The Adviser also explained that NPPG 19 was not a statutory document and as such it was not a legal requirement for planning applications to be accompanied by the supporting material listed in paragraph 61 of NPPG 19 (see Annex 3). He explained that the policy indicated what additional material could be sought in order to help authorities deal with this type of application, but that an authority may have good reasons not to follow this policy or feel that all of the information is not required in certain circumstances.

39. The Adviser agreed that, from an administrative viewpoint, the supplementary information provided by the applicants with the 2004 application was generally in line with paragraph 61 of NPPG 19.

40. In terms of the enforcement action taken by the Council, the Adviser was of the view that this had been sufficiently expeditious and effective. He explained that, in view of the compensation risk, 'stop notices' were rarely used by Councils and tended to be for 'changes of use' issues rather than construction. He said that they were generally used only in cases of short-term serious damage to public amenity or safety. He explained that the Council were not under any statutory obligation to monitor the construction of the mast and, in any case, would not always have the resources to do so. He noted that the new Planning Act would require an applicant to advise the Council of the commencement and completion of the development and would, therefore, allow Councils to allocate resources more effectively when monitoring developments. He explained that this provision was not yet in place. The Adviser was of the opinion that the one month and two month delays by the Council in ensuring the removal of the green cabinet, outlined in paragraph 35, were not unusual in such cases, especially as the cabinet would normally be permitted development. He explained that the cabinet being in the wrong position was not causing immediate harm and was not of fundamental importance and its removal would, therefore, not be an urgent priority for the Council, when

considered against their full range of duties. He also stated that a slight delay in moving the grey cabinet and mast would not be unreasonable.

41. On the issue of the Council's failure to ensure that colours for the mast and associated equipment were submitted prior to construction, the Adviser said that planning enforcement is a discretionary power of a planning authority. He explained that a planning authority may serve a breach of conditions notice on the developer if any of the conditions were not complied with, but that government advice stated that these powers should only be used when necessary to restore an unacceptable development to an acceptable form. He added that enforcement action is not to be used purely as a punitive action where there has been a breach of procedure, such a failure to apply for approval under a planning condition, especially where the outcome is what was intended anyway.

*(a) Conclusion*

42. The evidence shows that the objectors were aware of the original planning application and that, in October 2004, the Council advised them that amended plans had been submitted by the applicants which were available for them to view at the planning office. It was, therefore, open to the objectors to inspect the plans and submit any further objections if they felt it necessary. With the limited evidence available and whilst recognising that the events in question took place over three and half years ago, it is not possible for me to determine exactly what Mr B and Mr C were advised when they telephoned the Council to enquire about the amended plans and I cannot consider this point further.

43. The Council have said that it is their normal practice to make the plans available to the Committee before and during the meeting and have advised that this is what happened in this case. It is noted that the Council appear to have given slightly contradictory accounts on the presentation of the amended plans at the meeting and that Mr B and Mr C, who attended the meeting, are strongly of the opinion that the plans were not shown to the Committee. As there is no verbatim record of discussions at the meeting, it is not possible for me to determine exactly what happened at this meeting, which took place more than three years ago. However, I have no reason to believe that the plans would not have been available to the Committee on request at or before the Committee meeting, in line with normal procedure, and note that it is the responsibility of the Committee members to satisfy themselves that they are sufficiently aware of the details of the application before them. It is also noted



that the relevant plans are date-stamped as having been approved on 14 December 2004, the date of the Committee meeting.

44. It is acknowledged that, in both the report and the letter sent to objectors in October 2004, the Council refer to the mast as being 'slimline'. However, the application form and neighbour notification certificate for the original proposal also refer to the mast as being 'slimline'. The term 'slimline' was therefore used to describe the mast in documentation relating to both the original and amended proposals and there was no change in this description. There is no formal definition of what constitutes a 'slimline' mast and the interpretation of this term is subjective. Further, the amended plans, which showed the dimensions of the proposed mast, would have been available to both the objectors and the Committee and I have no reason to believe that the amended plans are not accurate. There is, therefore, no evidence to suggest that the Council provided the objectors with inaccurate information on the planning application.

45. On the issue of the presentation of the photomontage to the Committee, both parties are clear that the photomontage was shown to the Committee, but disagree about how it was presented. There is a considerable amount of contradictory evidence in this area and, as there is no requirement for the Council to keep a verbatim record of discussions at the Committee, it is difficult for me to prove what was actually said. It is noted that both the Reporter and the Adviser are of the opinion that a photomontage is intended solely as an aid to visualisation of a proposal and that it is the design of mast shown in the drawings which is important, a view with which I concur. However, the Adviser has also stated that the drawings and the photomontage should be consistent, otherwise the photomontage will be misleading. It is also noted that there is no evidence to suggest that what has been erected, including the antennae arrangement, does not comply with the amended plans for the 2004 application.

46. In considering whether the Council presented the photomontage to the Committee as being for the amended plans, I have carefully weighed up all evidence relating to the presentation at the Committee and subsequent events. The only evidence put forward by the Council to support their argument has been their statement that the photomontage was presented correctly and the photocopy of the then Development Control Manager's copy of the report to Committee, with his handwritten notes indicating that the photomontage was for the original application. The evidence against the Council's claim, however, is far more considerable.

47. Mr B and Mr C claim the photomontage was misrepresented to the Committee. The Council stamped the photomontage as being approved. The Council pursued the applicant regarding the appearance of the mast in their letters of 8 December 2005, 12 January and 17 February 2006 and at the discussions of December 2005 and January 2006. In her 2006 report to Committee, the planning officer made reference to the fact that the mast did not have the appearance of the mast as shown in the photomontage submitted with the planning application shown to the Committee in 2004. At no point in her 2006 report did she say that the 2004 Committee were told that the photomontage was for the original application and, in fact, she explained that the Council were not aware at the time that the original photomontage should have been superseded. It is also noted that the Consultants, who had full access to Council records, concluded that the Council misrepresented the photomontage to the Committee and that the Reporter, when considering the evidence at the appeal by the applicant, concluded that the Council were responsible for presenting the superseded photomontage to the Committee.

48. Further, despite extensive enquiries of the Council, it has not been explained to my or the Adviser's satisfaction why, in response to objectors' concerns, the Council accepted a proposal for an amended design of mast, on the basis that it would be of a reduced width and, therefore, as they stated, a more appropriate 'slimline' nature, and then put forward to the 2004 committee, the amended proposal for a mast which, for most of its height, is wider than the original, with antennae for a larger system. It has also not been explained to my satisfaction why the Council pursued the applicants about the appearance of the mast on five separate occasions from December 2005 to February 2006, when they claim to have been aware, in December 2004, that the photomontage was for the original drawings.

49. Having carefully weighed up all the evidence on this point, I have concluded that, on the balance of probabilities, the Council did present the photomontage as being representative of the mast in the amended application and that they, therefore, provided the Committee with inaccurate information. I am critical of this. If the planning officer had, as the Adviser has suggested, included information on the dimensions of the two masts in the report to Committee, this would have helped ensure that a clearer picture of what was being proposed was available to the Committee. It must be said, however, that whilst I accept that the Committee might have made a different decision had

they been given more accurate information, it is not possible for me to conclude that this would have been the case. Further, as stated in paragraph 43, the key issue is that the plans would have been available to the Committee and it is the responsibility of the Committee members to satisfy themselves that they are sufficiently aware of the details of the application before them.

50. I note the complainants' concerns regarding the views of the Council, the 2004 Committee, the Consultants, the 2006 Committee and the Reporter on the mast's compliance with planning policy and advice. However, it is not my role to comment on any differences in professional judgement of planning officials, rather to assess how the Council carried out their administrative functions in this case.

51. Therefore, in light of my conclusions at paragraph 44 and 49 above, I partially uphold this complaint.

*(a) Recommendation*

52. The Ombudsman recommends that the Council apologise to the complainants for providing the Committee with inaccurate information on the planning application. The Ombudsman recommends that the Council ensure that, in future, more thorough checks are made on documentation for planning applications to ensure that those documents which are current and those which are superseded are clearly identified. The Ombudsman further recommends that the Council ensure that, in future, planning reports to Committee contain information on the history of the application, comparing the original scheme with the final proposal and outlining any significant changes which have been made.

*(b) Conclusion*

53. The evidence shows that the Council first received complaints about the type and position of the mast in early December 2005. The Council then took steps to raise these issues with the applicants on 8 December 2005 and 6 and 12 January 2006. The applicants, as advised, then submitted an amended application around 19 January 2006. On 28 February 2006 the Council wrote to the applicants, asking further questions about the type and position of the mast. The report for retrospective planning permission went before the Planning Committee on 21 March 2006 and was refused. Two days later, the Council asked the applicants for a timescale for the removal of the unauthorised equipment. Although indicating an appeal would be submitted, in the absence of a commitment to remove the equipment, the enforcement notice was issued

on 25 May 2006 with a compliance date of August 2006, the month the applicants submitted their appeal to the Reporter.

54. On 15 December 2006, following the Reporter's refusal of the appeal, the Council advised the applicants they had to remove the equipment by 17 January 2007. Follow-up action to ensure the removal of the outstanding green cabinet took place on 14 February with an agreement of an extension to around 22 March 2006. Further follow-up action took place on 31 May and the cabinet was moved by 6 June 2007.

55. Given the Council's competing priorities and the fact that the delayed removal of the green cabinet would not cause immediate harm, I agree with the Adviser's view that the enforcement action taken by the Council in this case, and summarised in paragraphs 53 and 54 above, was sufficiently expeditious and effective. There is clearly some uncertainty over the specific removal date for the grey cabinet and mast. From the available evidence it is not possible for me to determine the exact date of the removal, however, the note provided by the Council suggests that the removal was completed by 31 January 2007. I again agree with the Adviser's view in this case that a slight delay was not unreasonable. Further, the Council were not under any obligation to monitor the construction of the mast and associated equipment and it would not be considered normal practice to issue a stop notice in the circumstances presented in this case. I accept the Adviser's opinion that, notwithstanding the terms of the condition requiring prior approval for the colour of the mast, the resultant development complied with the intention of this condition. The Council acted reasonably in not taking enforcement action purely for punitive reasons, as this would have served no purpose and it was their discretion to act accordingly. Therefore, I do not uphold this complaint.

56. 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	South Ayrshire Council
Mr A, Mr B and Mr C	The complainants
The Committee	The Council's planning committee
The Local Plan	Finalised South Ayrshire Local Plan
PAN 54	Planning Advice Note: PAN 54 Planning Enforcement
PAN 62	Planning Advice Note: PAN 62 Radio Telecommunications
NPPG 19	National Planning Policy Guidance NPPG 19 Radio Telecommunications
The Adviser	The Ombudsman's planning adviser
The Reporter	A Reporter of the Scottish Executive Inquiry Reporters Unit
The Consultants	Planning consultants employed by the Council to defend the Council's position at the appeal to the Reporter

**Glossary of Terms**

3G and 2G systems

3G is the third generation of mobile telephone standards and technology, superseding 2G. The most significant feature of 3G mobile technology is that it supports greater numbers of voice and data customers, especially in urban areas, and higher data rates at lower incremental cost than 2G

## List of legislation and policies considered

Planning Advice Note: PAN 54 Planning Enforcement

Planning Advice Note: PAN 62 Radio Telecommunications

### Mast Sharing

44. The conditions in code system operators' licences require them to explore the possibility of sharing an existing radio site. Evidence of this should accompany planning applications. Mast sharing will often enable quicker and cheaper installation and in some cases the additional equipment will be permitted development.

### Site Sharing

53. Site sharing involves a new installation being located in close proximity to an existing one. The five main mobile operators have made a commitment to speed up and increase site sharing, where appropriate. The concentration of installations on one site reduces proliferation but increases the contrast and the impact at that location. One mast of good design may go relatively unnoticed but a number of masts could draw the eye and provide a prominent focus. Site sharing will appear more visually acceptable if the masts and other base station elements - equipment housing, power supply, access tracks and fencing - appear as a single group.

54. When deciding whether site sharing is preferable to dispersal of masts, planning authorities and operators need to consider the area's character. Landscape and visual assessment techniques may help in deciding which approach minimises the landscape and visual impact.

National Planning Policy Guidance NPPG 19 Radio Telecommunications

### Development Control

61. There is a particular need for planning applications for radio telecommunications to be accompanied by supporting material which presents the proposal in its full context. This would include:

- a description of how the proposed equipment fits into the wider network (this may have to be provided in confidence);

- a consideration of the siting and design options which satisfy the operational requirements, and the reasons for the chosen solution;
- details of the design, including height, materials and all the components of the proposal (see paragraph 40);
- details of any proposed landscaping and screen planting;
- information on the method and timing of construction, particularly in sensitive rural areas;
- how the cumulative effects involving equipment already on site or nearby were considered; and
- further information in some circumstances on the visual impact e.g. a photomontage to show the proposed equipment in its wider setting. Very exceptionally a landscape or visual impact assessment may be needed.