

Scottish Parliament Region: North East Scotland

Case 200703201: Aberdeenshire Council

Summary of Investigation

Category

Local government: Planning: handling of application (complaints by opponents)

Overview

The complainant (Mr C) had formally complained to Aberdeenshire Council (the Council) about their handling of planning issues relating to the building of two houses on development plots (Plots A and B) adjacent to his property. The Council investigated Mr C's complaint and established that there had been procedural errors on their part in the handling of the planning applications for these plots. In May 2008, the Council put a proposal to Mr C to remedy his complaint. However, Mr C complained that the Council had failed to fulfil their proposal on a remedy. Mr C also raised a number of concerns relating to the Council's handling of a further planning application which was submitted for changes to Plot B. He complained that the Council failed to have proper regard to issues which affected him, of overlooking and privacy.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to fulfil their proposal on a remedy for the acknowledged procedural errors associated with the determination of the planning applications on Plots A and B; (*upheld*) and
- (b) there were shortcomings in the handling of a further planning application for changes to Plot B (*upheld*)

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) without further delay, make arrangements to pay Mr C the balance of the outstanding legal costs;
- (ii) without delay, take steps to have Mr C's bills independently audited to verify the costs he has claimed he has expended, as a result of the loss of his right to make representations on the planning applications related to Plots A and B and in pursuing his complaint to the Council;

- (iii) take steps to arrange for the planting of mature laurel bushes of at least 3 metres high to add to or replace those which are sited in front of the habitable rooms on the plane of the main gable of the house on Plot A and over a length of 10 metres, the position to be decided by Mr C;
- (iv) take immediate steps to enter into dialogue with the Agents of the owner of Plot B to secure a formal planning consent for the opaque windows or a formal planning agreement and make this conditional on the Council meeting the costs involved; and
- (v) in recognition of their failure to provide a solution through planning permission, which dealt with the problem of overlooking from Plot B, the Council should formally apologise to Mr C for their further shortcomings in the handling of this planning matter.

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

Main Investigation Report

Introduction

1. The complainant (Mr C) was the first purchaser of a plot on a housing development (the Development) which had detailed planning consent for eight houses. His house was built in 2005. The houses which are the subject of his complaint were built later on two neighbouring plots (Plots A and B), which bound his property on two sides. A local firm of architects acted as agents (the Agents) for the owners of these plots. In early November 2006, Mr C received neighbour notification that a planning application had been submitted to Aberdeenshire Council (the Council) seeking an amendment to the house type for Plot A and he submitted objections on the proposed changes to Plot A by email to the Council. On 28 November 2006, planning permission under delegation to officers was granted for the amendment to the house type for Plot A, without any objections recorded as having been received.

2. Subsequently, Mr C received neighbour notification for a planning application to seek an amendment for Plot B. On 4 December 2006, Mr C sent an email to the Council about the proposal to amend the house type on Plot B. He noted in his email that he had not yet been able to view the proposed house design but he felt compelled to express his concern that his privacy might be adversely affected by the proposed change of house type, given the changes which were proposed on Plot A. Planning permission was granted under delegation to officers for the changes to the house for Plot B on 22 December 2006. No objections were recorded as having been received.

3. In early 2007, having become aware that his objections about Plot A had not been considered, Mr C took steps to judicially review the Council's decision to grant planning consent for Plot A. The Council chose not to defend the complaint and accepted there were problems. The complaint did not proceed further but the Court awarded expenses to Mr C. Subsequently, a further application for planning consent for Plot A, which took up the Council's suggestion to delete a window from the plans, was submitted by the Agents. Mr C took the opportunity to make representations on this application and a decision, which had regard to his objections and again was taken under delegated powers, was made by the Council to grant planning consent. One of the conditions of the planning consent was the incorporation of opaque glazing in one of the windows on the gable wall facing Mr C's house.

4. Work commenced on the house on Plot B in 2007 and, as the construction took shape, Mr C became concerned that his objections about the change to the house type on Plot B, which he had made in December 2006 (see paragraph 2) had not been considered. He contacted the Council in October 2007 with his concerns and pointed out that the house was looking very different from other properties in the Development and complained that his privacy was going to be affected because of the positioning of the conservatory and its elevation in relation to his property.

5. A planning officer (Officer 1) responded to Mr C's complaint with the advice that his objections had not, unfortunately, been received by the Council's Planning and Environmental Services (Planning Services). Officer 1 assured Mr C that the matters he had raised in his objection had been considered in the determination of the application. Officer 1 subsequently informed Mr C that she would seek advice on the matter from her manager (Officer 2) and the Council's Law and Administration Department and, subsequently, on their recommendation, she informed Mr C that the matter would be dealt with as if Mr C's objections had been received. Action was taken to notify the local councillors for the ward of the planning application and they were provided with a copy of the original delegated report, the decision notice and Mr C's objections and were asked to indicate whether, if they had been consulted on the application, they would have agreed with the original recommendation or if they would have asked for the matter to be referred to the Area Committee. Not every councillor responded but those who did indicated their acceptance of the recommendation to grant planning permission.

6. Over the next five months, Mr C pursued his concerns about the development taking place on both plots, through Officer 2 and, subsequently, emailed Officer 2's manager to complain about the inadequate level of service the Council had provided including: their loss of his objections; his dissatisfaction with their handling of the applications for Plots A and B; and their failure to take action on Mr C's concerns about the detrimental affects of their decision-making on his and his family's privacy. In March 2008, Mr C made a formal complaint to the Chief Executive of the Council.

7. A senior manager in the Council (Officer 3) undertook an investigation into the complaint and replied to Mr C on 28 May 2008. In his response, Officer 3 acknowledged that there had been errors on the part of Planning Services. He formally apologised to Mr C for the system failure which had resulted in his

objections not being received on two separate occasions. In recognition of these shortcomings, Officer 3 informed Mr C that he considered that the costs which were detailed in his complaint, ie, the balance from those he had incurred in seeking a judicial review of the Council (see paragraph 3) should be reimbursed, as well as the other costs which Mr C had described in an email to the Council of 10 February 2008. Moreover, in relation to Plot A, Officer 3 informed Mr C that the Council would pay the cost of providing more effective screening to be planted between his property and Plot A (for reason that such a condition should have been imposed and had been raised as an issue by Planning Services in their correspondence with the applicant's Agents but had not been taken forward).

8. With regard to his review of the handling of the application for Plot B, Officer 3 noted in his response to Mr C that Planning Services, in assessing the planning application, had acknowledged that there would be a degree of overlooking and had put forward a series of options to the Agents on how this could be resolved. Planning Services had not, however, pursued this matter with the Agents and it was now recognised that the boundary wall did not provide adequate privacy. Officer 3 informed Mr C that he had asked Planning Services to take immediate steps to seek the submission of plans for the erection of appropriate screening on the boundary of Plot B with Mr C's property; and Officer 3 commented that if Mr C made representations about the proposals, it was his expectation that the matter would be referred to the Area Committee 'to allow all relevant issues to be examined in an open and transparent manner'. He would also ask Planning Services to consider the option of installing opaque glazing to the conservatory, should no other form of screening be appropriate.

9. Subsequently, in response to a request by Planning Services, the Agents submitted a further planning application in June 2008, which dealt mainly with their proposal to provide screening on the boundary between Plot B and Mr C's house. The Area Committee granted planning consent in November 2008 for the construction of a fence along the boundary, with the addition of a trellis to heighten the existing boundary wall, all to the height of 2 metres.

10. In his correspondence on his complaint, in relation to Plot B, Mr C complained that, although he had submitted objections against any proposal to deal with the problem of privacy by the use of screening or opaque glass, the report prepared by Planning Services had recommended the use of screening.

He stated that it would not be possible to comply with the consent to construct a 2.0-metre fence when the wall was already 2.0 metres in height and that he had made this clear in his objections and he complained that he had not been notified of the decision. He complained also that he had not yet received a reimbursement of the costs which Officer 3 had committed the Council to pay (see paragraph 7); nor had agreement been reached with the Council for replacement of screening for privacy on the boundary with Plot A. He complained that the Council's shortcomings in their handling of his correspondence and their negligence and the incompetence of personnel in dealing with the issues had resulted in him incurring further financial loss and had impacted on him and his family, through stress and concern over the loss of privacy from the houses which had been constructed on Plots A and B.

11. I made enquiries to the Council about the delay in reimbursing Mr C's expenses and costs, to establish if this was an issue which could be resolved without the need for investigation. However, agreement could not be reached between Mr C and the Council on the documentation which should be provided before payment would be made, or on the amount, and the matter remained unresolved. I, therefore, decided in April 2009 to conduct a formal investigation.

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

- (a) the Council failed to fulfil their proposal on a remedy for the acknowledged procedural errors associated with the determination of the planning applications on Plots A and B; and
- (b) there were shortcomings in the handling of a further planning application for changes to Plot B.

13. The investigation has concentrated on events dating from Officer 3's proposals to provide a resolution (May 2008). Events dating from before then in respect of Plot A were not investigated because they had been the subject of a judicial review application (see paragraph 3) and it was considered that they were outwith the Ombudsman's jurisdiction under Section 7(8) of the Scottish Public Services Ombudsman Act 2002. As Officer 3 had acknowledged in his findings from his investigation in 2008 that Mr C's complaints at that time were founded (and had suggested ways for a resolution) this was the starting point.

Investigation

14. My staff's investigation of the complaints involved enquiries to the Council and discussion with Officer 3, who provided my office with sight of the relevant documents. My staff also corresponded with Mr C and met him on site with the Ombudsman's planning adviser (the Adviser). Following this visit, enquiries were made to the Council seeking clarification of their planning policies, to enable the Adviser to come to a considered view on the planning issues affecting the complaint.

15. The relevant Council planning policy Gen\2 - Layout, Siting and Design of New Development, and Appendix 1 – The Design of New Development in Aberdeenshire as contained in the Aberdeenshire Local Plan 2006 were used in determining the planning application. There is a requirement that new development should be laid out to fit into a site and respect the character and amenity of the surrounding area. The Council's guidance on Policy Gen\2 states, with regard to neighbouring property, that new development should:

Respect the existing character and scale of its neighbours.

Protect the privacy of both existing and prospective neighbouring residents.

Ensure the provision of a window to common property boundary separation of at least 9 metres for ground floor windows and 12 metres for upper floor windows is included. (Figure will vary depending on factors such as slope of the ground, angle of a window, use of room and use of opaque glazing or other screening).

Not unduly reduce sunlight or daylight into (or create an unreasonably overbearing effect on) either the windows or private garden of a neighbouring property.

16. 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) Failure by the Council to fulfil their proposal on a remedy for the acknowledged procedural errors associated with the determination of the planning applications on Plots A and B

The Council's Proposed Resolution

17. The resolution proposed by Officer 3 in May 2008 (see paragraphs 7 and 8) consisted of a mixture of the Council paying the costs which Mr C had stated he had incurred as a consequence of the Council losing his objections

(legal fees and other); as well as an offer to meet the costs of planting more effective screening (on Mr C's boundary with Plot A, as a replacement for the hedging he had already planted at a cost of £800); and other action (Planning Services had to take immediate steps to address the issue of overlooking, which had not been given proper significance in the planning consent granted for Plot B). Mr C responded to Officer 3's proposal on a remedy with advice that he had re-assessed his previous assessment of the costs and found that these did not properly reflect the position. He provided details of the re-assessed costs to Planning Services and a quotation for the replacement hedging at a height of 3 metres along the full length of the mutual boundary, which he stated would be required to provide privacy.

18. In the correspondence which ensued between the Council and Mr C, Mr C was asked to provide receipts of payment which had been disimbursed. He provided invoices from his company and from his solicitor. These were not acceptable to the Council. As the delay in reaching agreement increased, Mr C's bill for his costs also increased, as he included the time he had expended in pursuing the matter as time away from his business, with interest added. In his formal complaint, Mr C claimed that he had provided the documentation requested by the Council but that they had 'changed the goalposts' from needing to see invoices to asking for receipts. He was aggrieved that they were refusing to meet his costs.

19. Additionally, there was no agreement between Mr C and the Council on the provision of hedging on the boundary with Plot A. Mr C had already planted immature laurel bushes and wished to plant a similar type of mature laurel bush of a height (3 metres) which, he explained to the Council, would provide effective screening and give privacy now rather than in the future. He submitted a quotation and requested the Council send a cheque to cover the cost (£11,080). The Council rejected his request with the advice that 'There is no reason to require provision of laurel bushes as there are numerous other species which will fulfil the function in the fullness of time'.

20. The Council's files showed that the information on which Officer 3 made a decision on payment of legal and other costs, was based on Mr C's complaint that the Council had failed to recognise either the stress or disruption to his family and his business, or make any proposal for compensation. At the time, Mr C had stated that the financial burden which had been placed on him and his family was: discounted solicitor's fees of £1,599.00; planting of hedging at the

boundary with Plot A, £800; and correspondence resource committed from his business of £1,175.00. However, he subsequently submitted a re-assessed claim for business charges (£8,483.06).

21. Mr C pursued payment from the Council in June and July 2008 and was informed that advice on the matter was being sought from the Council's legal department. On 13 August 2008, Planning Services informed Mr C that his claims had been reviewed and, with production of the appropriate receipts, the Council would be prepared to reimburse the costs, as indicated by Officer 3. However, Planning Services rejected Mr C's re-assessed claim for business charges (see paragraph 20) on the grounds that these did not fall within the category of costs referred to in Officer 3's letter. This statement did not take into account that Mr C's original claim for costs appeared to have been based on similar costs (see paragraph 7), which he had confirmed in correspondence with the Council. Despite Mr C's further representations in support of his claim, the Council maintained their position that they would not reimburse Mr C's costs without receipts, or fund the purchase of mature laurel bushes. In an email of 4 December 2008 from Officer 3 to his colleagues, he referred to Mr C's correspondence and the fact that Mr C had provided details of costs and invoices and asked them to recall that they were in agreement as to the validity of Mr C's claims.

The planning position

Plot A

22. The original planning consent was for a house design which had two windows facing Mr C's house (the hall and a study) and did not align with the main living area windows in Mr C's house. The application subsequently submitted by the Agents proposed five windows on the south west elevation facing Mr C's house. Two of these were over 9 metres from the mutual boundary, in the projecting front porch and rear bay windows; two were in the plane of the main gable, at about 8 metres from the mutual boundary; and one was in a projecting gable, at about 6 metres from Mr C's boundary. However, after discussion with Planning Services, the window in the projecting gable was deleted. Mr C complained to the Council that the two windows remaining in the main gable were directly lined up with his living room (bay) window and that his privacy was affected because the laurel hedge, which he had planted on the boundary between the properties in the knowledge of the first approved plan, did not provide privacy for him and his family in the light of the amended scheme subsequently built.

23. In his response to Mr C's complaint about the subsequent planning consent granted for Plot A, Officer 3 had acknowledged that the window-to-window distance between Mr C's house and the hall and living room window in the house on Plot A was less than 18 metres (as defined by Policy Gen\2, where the reference to 9 metres is the measurement up to each boundary – see paragraph 15). Officer 3 commented that the complaint file confirmed that Officer 1 had discussed with the Agents an amendment to the design to omit these two windows but the Agents had not agreed to this. It had not been pursued further, other than the addition of a planning condition including the incorporation of opaque glazing into the hall window. Officer 3 acknowledged that it was difficult to comprehend why it was not a condition for both windows. However, Officer 3 noted that Officer 1 had taken into consideration the planting which had been carried out on the boundary and that this would, in time, form a substantial screen between the two properties, thereby meeting the guidance in Policy Gen\2. Officer 3 considered that the matter was one of professional judgement as to whether the proposals were acceptable and while, therefore, he accepted the position reached by Officer 1, he informed Mr C that he considered it would be appropriate to 'meet the costs of any planting over and above that required as part of your original consent in respect of providing more effective screening in relation to the Lounge window ...' of the house on Plot A.

The Adviser's view

24. When the Adviser and I visited in June 2009, one of the windows had one way glass fitted, which would have resolved the issue of privacy in this room for the occupants of the house on Plot A but not for Mr C and his family. The Adviser's view, on seeing the relationship between Plot A and its overlooking of Mr C's house, was that the overlooking could have been avoided with some imagination in the positioning of the garage and a section of wall; and that if the Council had been concerned about this issue, greater effort could have been made to specify a better boundary. However, it appeared to the Adviser that the Council were unsure about what they were aiming to achieve with the removal of the window in the projecting gable and the opaque treatment of the hall window but not the other in the plane of the main gable. He considered that the Council should be asked to explain more fully their policy and practice on overlooking development; whether the development of Plot A breached planning consent; and, if it did, what steps were being taken or considered to remedy the breaches.

25. In the light of the Adviser's view, I asked Officer 3 what Planning Services sought to achieve from implementation of the Council's policies with regard to the development of Plot A. Officer 3 commented that the aim was to achieve a high quality of development which respected the environment and that, in the case of this site, the policies were used to ensure that the amenity of the adjacent properties were not adversely impacted. Given the volume of objections which were received by the Council for planning applications, Officer 3 stated that it was not the Council's usual practice to reply specifically to objectors. However, Planning Services had corresponded with Mr C, providing their assessment of Plot A and advice about their policy on privacy, impact and overlooking; and had corresponded also with the Agents in 2007, subsequent to receiving Mr C's objections.

26. The Council's files confirmed that Mr C was informed in early 2007 that the Council's policy sought to ensure that reasonable privacy was not significantly diminished by overlooking from public rooms; and that it was not considered that Mr C's property was so affected that the windows should be removed. However, the Agents were contacted subsequently (March 2007), seeking a view on the lack of screening in their proposals; and with proposals by Planning Services to deal with the potential for the windows of the proposed new dwelling to overlook and be overlooked by Mr C's property by their re-location and/or deletion; or the provision of additional screening. (The failure of Planning Services to take this issue forward was confirmed by Officer 3 in his response to Mr C's formal complaint in May 2008 – see paragraph 7).

27. I also asked Officer 3 for a view on whether the Council regarded the protection of privacy as a matter of protection of the individual or public interest and, if the latter, how the Council had sought to apply their standards consistently. Officer 3 responded that the protection of privacy was a matter of protection of the individual, both existing and prospective neighbouring residents (as contained in the guidance in Appendix 1 of the Design of New Development in Aberdeenshire - see paragraph 15) and that the delegated reports confirmed that the impact on Mr C's property was considered by Planning Services when they assessed the proposals for Plot A.

28. In early September 2009, Officer 3 informed me that a site visit had been undertaken and the planning position on Plot A was that all matters accorded with the granted consent, bar the fitting of opaque glazing in the hall window. He confirmed that Planning Services were in contact with the Agents to secure

compliance and commented that the work was expected to be completed by mid September 2009. Mr C subsequently confirmed that this was fitted at the end of September 2009. However, he stated that he believed this was due to his own actions in instructing his solicitor to write to the Agents rather than any action on the part of the Council.

29. The Adviser assessed the further information provided by the Council with that which had been previously provided and commented that he was satisfied the decision to grant the application was made as a result of the proper assessment of the effects of the development plan policies and the material considerations affecting Plot A. However, the Adviser commented that it remained a concern that there were inconsistencies in the terms of the planning consent which had required opaque glass to the hall window but not to the living room window.

30. With regard to the provision of a replacement hedge; whilst having regard to Officer 3's comments on screening, the Adviser pointed out that the overlooking related to habitable rooms at the front of Plot A and that it was a consideration that the landscape feature proposed (hedging) should deal with the intervisibility between windows where it is crucial, which was not for the whole length of the boundary between the two properties.

(a) Conclusion

31. The investigation of this complaint was not to establish whether there had been fault by the Council, as this had been found through the Council's own review of their handling of the matter. It was to look at why, despite the recommendations made to remedy the complaint, it had not been resolved and had grown; with a further complaint being made by Mr C about the Council's subsequent handling of the application submitted in 2008, to deal with the privacy issues arising from overlooking from the conservatory built on Plot B, which I have dealt with under complaint (b).

32. Officer 3's investigation into and review of the complaint in 2008 appeared to have been carried out comprehensively and his proposal to resolve it was reasonable, given his findings. It is unfortunate, therefore, that a remedy could not be achieved because of stalemate between the Council and Mr C. From Officer 3's comments, this was not for the Council about the validity of Mr C's claims, rather it related to documentation and a dispute about the other expenses claimed.

33. Officer 3's offer to resolve Mr C's complaint with the payment of costs did not state that Mr C would be required to provide documentation. However, I do not consider that it was unreasonable for the Council to ask for proof of the balance of costs for Mr C's legal bill or to ask for details of the other costs which Mr C claimed he had expended. However, the decision taken not to accept his solicitor's invoice and to reject the revised claim submitted for other costs appears to be somewhat disingenuous, taking into account that Officer 3's offer of a remedy for the Council's shortcomings had included agreement to meet both the balance of legal costs and other costs, which were described in Mr C's original claim in February 2008 as correspondence resource committed from his business.

34. With regard to the provision of screening on the boundary with Plot A, the intent of the Council's offer was to provide screening which would be more effective than that currently in place. In the circumstances, the Council's rejection of his claim on the basis that an alternative to his preferred choice of laurel bushes would provide this in the fullness of time was not in the spirit of the original offer. Mr C had already planted hedging the length of this boundary, as required by the conditions of planning consent, and had already expended £800.

35. It remains the case that a resolution for the Council's acknowledged shortcomings has not been achieved and this has to be addressed. I consider that it is reasonable for the Council, without further delay, to make arrangements to pay Mr C the balance of the outstanding legal costs. With regard to the other expenses, given that there has been a failure to come to an agreement on the expenses involved, the Council should, without delay, take steps to have Mr C's bills independently audited to verify the costs he has claimed he has expended, as a result of the loss of his right to make representations on the planning applications related to Plots A and B and in pursuing his complaint to the Council.

36. Further, suitable screening is still required on the boundary of Mr C's property with Plot A. I have had regard to the Adviser's comment that the area affected is for part of the boundary and, bearing this in mind, I recommend that, in order to provide screening which would be effective now, the Council should take steps to arrange for the planting of mature laurel bushes at least 3 metres high to add to or replace those which are sited in front of the habitable rooms on

the plane of the main gable of the house on Plot A and over a length of 10 metres, the position to be decided by Mr C.

37. In light of the above, I uphold this head of complaint.

(a) Recommendations

38. The Ombudsman recommends that the Council:

- (i) without further delay, make arrangements to pay Mr C the balance of the outstanding legal costs;
- (ii) without delay, take steps to have Mr C's bills independently audited to verify the costs he has claimed he has expended, as a result of the loss of his right to make representations on the planning applications related to Plots A and B and in pursuing his complaint to the Council; and
- (iii) take steps to arrange for the planting of mature laurel bushes of at least 3 metres high to add to or replace those which are sited in front of the habitable rooms on the plane of the main gable of the house on Plot A and over a length of 10 metres, the position to be decided by Mr C.

(b) Shortcomings in the handling of a further planning application for changes to Plot B

39. With regard to the house on Plot B, following Officer 3's findings in May 2008 from his review of the complaint, that Planning Services had failed to pursue with the Agents the issue of overlooking; and his request to Planning Services to take immediate steps to seek the submission of plans for the erection of appropriate screening (see paragraphs 8 and 9); Mr C had made further representations to Officer 3 because he was dissatisfied with the recommendation for a remedy (screening rather than an alternative option). He stated that the Council had had an adequate opportunity to act on this matter before the construction was completed because he had made it clear to them on numerous occasions that it was in contravention of the Council's development plan (considerably less than the requisite separation distance between windows of habitable rooms) and would cause a problem of overlooking. Officer 3 informed Mr C that his conclusions on the appropriate remedy took cognisance of all the issues and information before him and his decision would stand.

40. The Council's file confirmed that Planning Services took action to secure the submission of a further planning application for Plot B (submitted in June 2008); the proposal was advertised (as a change of house type); and Mr C

took the opportunity to make objections on a number of other issues relating to the size, scale and design of the house, as well as his reasons for objecting to any proposal for screening between the properties (on the grounds that it would adversely affect his family's amenity). The Area Committee report contained advice that planning consent had been granted under a previous application and that the application before committee was to provide appropriate screening measures between Plot B and Mr C's property.

41. The Area Committee report also referred to Mr C's objection to screening (proximity to boundary) and the applicant's objection to opaque glass being installed. Planning Services' recommendation (reported as a compromise following negotiation and submission of an amended plan for the boundary treatment) was that, for the length of the conservatory, trellis should be erected above the level of the existing wall, to a height of 2.0 metres above ground level; and fast growing climbers should be planted which, over time, would provide screening. This was considered a sympathetic treatment to the wider environment. The planner's recommendation was approved and consent was granted. Mr C complained that the proposal to erect trellis could not achieve the desired effect because the existing wall was already 2.0 metres in height.

The Adviser's view

42. The Adviser expressed concern that it was not clear that the height of trellis above the wall, referred to as being required by the Council, would be high enough to ensure privacy at the very short distance involved. In follow-up enquiries which the Adviser suggested should be undertaken to the Council, they were asked to explain what consideration had been given at any stage to the relationship of the conservatory to the living room window in Mr C's house being only 8 metres away and why it was considered appropriate to seek a fence (trellis) to overtop the existing wall, when amended plans were submitted for Plot B by the Agents, rather than a lowering of the floor of the conservatory. The Adviser commented that the plans were wrong, as they showed a trellis scaling from the plan at approximately 0.5 metre overtopping the existing wall to screen the full height of the windows of the conservatory. However, the total height of the existing wall and trellis was shown as 2 metres and yet the existing wall was already at approximately 2 metres. Accordingly, the fence at the height shown on the plan would provide neither an effective screen nor a satisfactory design solution. I, therefore, asked the Council what action they had intended to take and whether they had the power to enforce a satisfactory resolution in view of the clear intent of the plan if not the correct dimensions.

43. In response, the Council confirmed that the issue of overlooking was considered as part of the original application but the view taken was that the proposed boundary treatment would secure privacy. Further examination of the matter had established that the boundary treatment would only provide screening to 1.6 metres above the finished floor level. Although the addition of the trellis would take the height to 2 metres, which was higher than normally expected in a residential area (normally 1.8 metres), it would address the matter in hand. However, in supplementary information provided to the Council by the Agents, the height of the boundary wall was given as 1.95 metres and the Agents pointed out that, to comply with the planning consent, the height of the trellis would be just 50 centimetres. Officer 3 subsequently commented that, in the light of the problems with the trellis, the developer was now fitting opaque glass to the upper panes of the conservatory.

44. The Adviser commented that, from the responses given about the consideration of a further application for Plot B, it was evident that the Council had not thought through clearly how the proposal shown in the plan relating to the application for a fence and trellis would actually achieve the objective to screen the conservatory. The Council's informal agreement to an alternative solution of opaque glass in the top hoppers of the conservatory windows would deal with the matter but this would not carry the force of a statutorily approved planning consent and would not be enforceable in the future.

(b) Conclusion

45. Officer 3's decision on how to address the problem of overlooking, which had arisen from the building of a conservatory on Plot B, gave a clear steer to Planning Services on the options for a resolution to the issues which were affecting Mr C and his family. It is disappointing, therefore, that they failed to provide a solution which dealt with the problem. It is clear that Planning Services failed to think through clearly how the proposal shown in the plan, relating to the application for fencing and trellis, would actually achieve the objective to screen the conservatory and this was maladministration. Therefore, I uphold this head of complaint. As a consequence of this failing, the intent to provide screening could not be realised and, by default, a solution has been found with the proposal from the Agents for the owner to install opaque glass in the top hoppers.

46. However, although this provides a solution for the present, there is the potential for the problem of overlooking to arise in the future, should an owner of the house on Plot B decide to remove the opaque glass and replace it with clear glass. This is because it does not have the benefit of a statutorily approved planning consent and the Council would not, therefore, be able to take enforcement action in the future. In the circumstances, this can only be considered an acceptable alternative if one of the following two options is followed: option 1, that the Agents on behalf of the owner or the owner, submit a further planning application to secure formal approval for the opaque glass; or option 2, that the Council and the owner, enter in to a section 75 planning agreement, registered with the Keeper of Sasines and binding on future owners, whereby it is agreed that the panes will always be opaque, in consideration of which, the Council agree to suspend indefinitely the enforcement of the condition requiring the trellis addition to the wall. I recommend, therefore, that the Council take immediate steps to enter into dialogue with the Agents of the owner of Plot B to secure the agreement of the owner to one of the foregoing options and that this is made conditional on the Council meeting the costs involved.

47. Finally, in recognition of the Council's failure to provide a solution through planning permission which dealt with the problem of overlooking, the Council should formally apologise to Mr C for their further shortcomings in the handling of this planning matter.

(b) Recommendations

48. The Ombudsman recommends that the Council:

- (i) take immediate steps to enter into dialogue with the Agents of the owner of Plot B to secure a formal planning consent for the opaque windows or a formal planning agreement and make this conditional on the Council meeting the costs involved; and
- (ii) in recognition of their failure to provide a solution through planning permission, which dealt with the problem of overlooking from Plot B, the Council should formally apologise to Mr C for their further shortcomings in the handling of this planning matter.

49. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify him when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
The Development	A housing development
Plots A and B	Two neighbouring plots sited on boundaries of Mr C's property
The Agents	Local firm of architects who acted as agents for the owners of Plots A and B
The Council	Aberdeenshire Council
Officer 1	Planning Officer
Planning Services	Planning and Environmental Services
Officer 2	Planning Manager
Officer 3	A Senior Manager
The Adviser	The Ombudsman's planning adviser

List of legislation and policies considered

Aberdeenshire Council Planning Policy Gen\2

Aberdeenshire Local Plan