

Scottish Parliament Region: North East Scotland

Case 200900833: Aberdeenshire Council

Summary of Investigation

Category

Local government: Planning; Agricultural Prior Notification; complaint by neighbour

Overview

The complainant (Mr C) raised concern about the handling by Aberdeenshire Council (the Council) of a prior notification by the owners (Mr and Mrs D) of an adjacent field in respect of the development of an agricultural building.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed properly to handle Mr and Mrs D's agricultural prior notification submission, representations made by Mr C and his agent, and Mr C's formal complaint (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) review the circumstances of this complaint with a view to issuing instructions to case officers to enable them to expedite agricultural prior notifications and to deal with representations made by neighbours on proposals where permitted development rights are sought;
- (ii) review the content of their website on communication with those making representations on planning applications generally and the particular circumstances pertaining in respect of agricultural prior notification; and
- (iii) review their handling of this particular complaint with a view to preventing a recurrence of their poor complaint handling.

Main Investigation Report

Introduction

1. The complainant (Mr C) lives in a detached house in a rural area in Aberdeenshire. Adjacent to his house is a field extending to 1.9 hectares. A location in the north west corner of the field nearest to Mr C and his wife (Mrs C)'s house was chosen by the non-resident owners (Mr and Mrs D) as the site for a new agricultural building and they wrote to Aberdeenshire Council (the Council) in October 2007, in terms of the agricultural prior notification procedures, intimating their proposed development. In the event, the Council did not respond within 28 days withholding permitted development rights

2. The complaint from Mr C which I have investigated is that the Council failed properly to handle Mr and Mrs D's agricultural prior notification submission, representations made by Mr C and his agent, and Mr C's formal complaint.

Background

3. A procedure of prior notification to planning authorities for farm and forestry buildings was introduced through the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the Order). Anyone intending to build, or significantly alter or extend, an agricultural building is required to apply to the planning authority for a determination of whether or not their prior approval is required for the siting, design and external appearance of the building. The procedure applies only to the exercise of permitted rights since planning permission is required, for example, on agricultural land less than an acre (0.4 hectares) or for the construction, extension or alteration of any building whose area exceeds 465 square metres or where certain animals (specifically pigs, poultry, animals reared for fur or skins, or rabbits) are to be housed within 400 metres of the curtilage of a 'protected building' occupied by people. The procedure does not require neighbours to be notified. The planning authority has 28 days from receipt of the notification with requisite plans and elevation drawings to respond. An authority may, if it wishes, seek a modification of the proposals with regard to materials, design and siting. If the original proposal is modified by agreement and the authority gives written approval that the modified proposals can proceed, there is no requirement to renotify the authority. If, however, the planning authority does not respond within the 28 day period, then the development can proceed exactly as notified.

Investigation

4. I considered Mr C's file of correspondence with the Council, reviewed the relevant legislation, made enquiry of the Council, and discussed aspects of the complaint with one of the Ombudsman's professional advisers. 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 the opportunity to comment on a draft of this report.

Complaint: The Council failed properly to handle Mr and Mrs D's agricultural prior notification submission, representations made by Mr C and his agent, and Mr C's formal complaint

5. Mr and Mrs C have lived in their home in Aberdeenshire for the past 23 years. Their house is situated in a small steading with outbuildings. The field adjacent to their property extends to some 1.9 hectares. It was last used by a previous owner for grazing horses but lay fallow from 2004. An 11 Kilovolts electrical power transmission line traverses the field.

6. On 12 October 2007, an agricultural prior notification form was submitted to the Council by Mr and Mrs D to erect a steel clad building 24 metres long by 11.5 metres wide by 6.57 metres high for general agricultural storage, implements etc. In the form, Mr and Mrs D stated that the area of their agricultural unit was 3.2 hectares and that an agricultural holding number had been 'applied for'. The form was date stamped by the Council as having been received on 17 October 2007, the fee of £55 was paid, and the application registered on 14 November 2007.

7. Mr and Mrs C became aware of Mr and Mrs D's intentions inadvertently when the planning case officer (Officer 1) called at their home. Mrs C, did not engage in detailed discussion with Officer 1 but alerted Mr C and he instructed a planning consultant (the Consultant). The Consultant wrote to Planning and Environmental Services on 23 November 2007 pointing out that the proposed building would be 12 metres from the residential curtilage of Mr and Mrs C's home and 25 metres from their house. The Consultant referred to Mr and Mrs C's house being a protected building in terms of the Order (which she said stated that agricultural buildings within 400 metres of any protected building shall not *inter alia* be used for the housing of livestock or poultry). She requested that the proposal for permitted development rights be turned down and that any subsequent planning application take into account Mr and Mrs C's planning objections, the detrimental impact of the size of the building, the

location close to an 11 Kilovolts power line and that the size of the building was out of proportion to the land holding. The Consultant wrote again to Officer 1 on 27 November 2007 to add the point that the field had not been in agricultural use since before 2004.

8. Following his site visit, Officer 1 wrote to Mr and Mrs D on 23 November 2007 asking them (a) to consider repositioning the proposed building and (b) to clarify its use. In a response of 2 December 2007, Mr D stated with regard to (a) that he would have no objections to repositioning the building in the north east corner of the field. He stated that he had chosen the location at the north west of the field as he felt it would blend with existing buildings and would not impact on the skyline. With regard to (b), Mr D stated that the intended use of the building was for the long-term storage of hay and straw for livestock.

9. Officer 1 emailed the Consultant on 4 December 2007 stating that he had 'paused' the 28 day period until he received a reply from the applicant. No letter withholding permitted development rights was sent to Mr and Mrs D before the end of the 28 day period.

10. A delegated report on the proposal was prepared on 4 January 2008. The assessment recorded that only siting and design could be commented upon. After describing the siting and materials, it was pointed out that the siting and design and external appearance were sensitive to the quality and character of the landscape. The report concluded that it was not possible to consider the points raised on behalf of Mr C, since amenity of adjacent properties was not a consideration relating to the 'siting and design' of agricultural notifications. The 'siting' of the building referred only to its effect on the surrounding landscape. Since the proposed location and design of the agricultural building was suitable, and the application was classed as permitted development, the author saw no issues with the proposal.

11. No decision was, however, conveyed immediately to Mr and Mrs D. While the Consultant twice emailed Officer 1 on behalf of Mr and Mrs C (on 9 January and 20 February 2008) seeking an update, those emails did not elicit an immediate reply. On 25 February 2008, Officer 1 prepared a letter of reply to the Consultant but in error he sent this to Mr and Mrs D. A letter was sent to the Consultant on 27 February 2008 as intended with an apology for the delay in response.

12. On 5 March 2008, Mr C spoke with the Council's Area Planning Officer (Officer 2). Mr C confirmed his telephone call in a letter of the same date to Officer 2. He requested that she keep him informed on progress.

13. Officer 2 wrote to Mr and Mrs D on 5 March 2008, apologising for the delay in forwarding the associated paperwork to them. She stated that issues had arisen while dealing with their request, namely that Officer 1 had spoken with their neighbours on site who were concerned about the proximity of the building to their property. She informed them that as the Planning Service had not responded to Mr and Mrs D within the 28 day period, Mr and Mrs D were at liberty to erect the building in the position indicated. She indicated, however, that she would like to suggest an alternative position. Officer 2 asked Mr and Mrs D to contact her to arrange a time to meet with her to discuss the processing of their request and to invite them to submit another one for an alternative location should they be agreeable to this.

14. Officer 2 updated Mr and Mrs C on 19 May 2008. She stated that the Planning Service had written to Mr and Mrs D to ask for their co-operation in applying for the agricultural building in the north east corner of their site away from their property. A request had also been made to revoke the previous notification in the event that they decided to reapply for the building in the alternative location. Mr and Mrs C were informed that discussions were ongoing and that the Council would be back in contact with them.

15. Mr C wrote to Officer 2 on 7 July 2008. He expressed concern at the length of time that had elapsed. He raised the issue of the 11 Kilovolts power line (paragraph 7) and Health and Safety Executive (HSE) Guidance Note GS6 which insists on a six metre corridor between an overhead power line and any building work. He sought the Council's assurance that they would not permit the building to be moved any closer to his property. He also stated that he would like to meet with Officer 2 and with the Head of Development Management and Building Standards (Officer 3) to discuss this, and also landscape planting, and controls over animals using the building.

16. Officer 2 met with Mr and Mrs C on 25 July 2008. She followed this up with a letter on 31 July 2008. She confirmed the Council's position but stated that they remained hopeful that Mr and Mrs D would choose to discuss an alternative location for the building; that the relevant HSE guidance had been

sent to them; that the Council could not place any conditions in relation to tree planting but understood that Mr and Mrs D intended to plant trees. The housing of animals would normally require full planning consent and use for that purpose could lead to the Council's use of their enforcement powers. Officer 2 noted that Mr and Mrs C might wish to take their case to the Ombudsman. Officer 2 undertook to contact Mr and Mrs C again by 5 September 2008 at the latest.

17. Having heard nothing further by 9 February 2009, Mr C wrote a formal complaint to the Council's Area Manager. He raised eight specific points (1) timescales; (2) siting; (3) the 'paused' application; (4) the high voltage electric transmission line; (5) discrepancies in field size that were not resolved; (6) errors in the delegated report; (7) the error with the letter of 25 February 2008; and (8) the conditions attached to the letter of determination. With regard to point (2), Mr C maintained that a more cost effective site for the building was available, and that the proximity of the overhead electric transmission line had been pointed out to Officer 1 at his site visit. With respect to point (8), Mr C queried the agricultural unit given the discrepancy in field size (1.9 hectares or 3.2 hectares), and how the building was 'requisite for the purposes of agriculture within the unit'. Receipt of Mr C's letter was acknowledged but he received no reply.

18. On 2 June 2009, Mr C wrote to the Chief Executive of the Council repeating the same eight points. He emphasised that no established agricultural business existed at the time of application, that this was a new building in a new agricultural unit, that the agricultural unit of 1.9 hectares was not adjacent to or attached to any other land under the applicant's ownership, that the applicant was not resident locally, that the building was of a disproportionate size, and that it would have a detrimental effect through noise and traffic on Mr and Mrs C's amenity.

19. Mr C's letter was passed to the Planning Manager (Development) (Officer 4) to consider. Officer 4's reply to Mr C of 9 June 2009, commenced with an apology for the unacceptable lack of a response to the letter of complaint of 9 February 2009. He stated that the Council had relied on the information received from the applicant in good faith; that the Planning Service accepted that the processing of the notification had in many instances been poor; and that misleading information had been given to Mr C. The Planning Service also accepted that in terms of location there were better sites in the field where, arguably, the potential impact of the building on Mr and Mrs C's property

would be reduced. However, the Planning Service considered that ultimately the notification was considered correctly and that the proposed building was permitted development in terms of the relevant legislation. Officer 4's letter did not advise Mr C on further pursuit of the complaint.

20. Following correspondence with the Ombudsman's office and the Council, Mr C met with Officer 3 on 26 August 2009. After discussing some matters with Officer 2, Officer 3 wrote to Mr C on 30 September 2009. He referred in his letter to the prior notification procedure, previously explained by Officer 2 and Officer 4, and cited Planning Advice Note 39 (PAN39) to justify why the site of the building close to Mr and Mrs C's property was acceptable. He commented also on the overhead electrical transmission line (which he considered was not a matter for the agricultural prior notification procedure) and said that the access track would be permitted development since the field was already served by a gate. Officer 3 apologised for the confusion that had arisen as a result of the administrative errors in the case but stated that he was satisfied, taking into account the development proposals and the guidance in that regard, that the acceptance of the agricultural notification was correct.

Conclusion

21. The prior notification procedure does not require a planning authority to investigate the *bona fides* of a person making a prior notification request or to explore the operational need for the proposed building. No neighbour notification is required, and the decision to be taken is simply whether or not, on the basis of consideration of its siting and design, the proposed building is permitted development. Had the 'proper' procedure been followed, the whole process could have been completed without Mr and Mrs C having been alerted, and without any input from them.

22. A straightforward procedure was, however, complicated by Officer 1 alerting Mr and Mrs C to the proposals and writing to Mr and Mrs D. Mr D's positive response was shared and the email to the Consultant (paragraph 9) clearly raised expectations that the Council would endeavour to pursue matters to a conclusion satisfactory to Mr and Mrs C. However, Officer 1's decision to 'pause' his consideration of Mr and Mrs D's request, while well intentioned, is not specifically allowed for in the procedures and was clearly unrealistic given the impending expiry of the 28 day period. An immediate follow up to Mr D's communication was necessary. Had a response to that follow up not been

received within a week, then the issue could, and should, have been addressed when the 28 day period expired (12 December 2007).

23. While the Council would have been entitled not to enter into (or indeed continue) a dialogue with a neighbour or their agent in such circumstances, that position should have been pointed out from the outset, preferably with a reference to procedures set out in their website. The Council chose, however, to engage with Mr and Mrs C. Despite his initial response, and Officer 2's letter of 5 March 2008, Mr D did not substitute a different set of proposals.

24. The Council's Area Manager, in response to my decision to investigate, conceded that due to oversights there were errors in the handling of Mr C's complaint which were unacceptable. In discussion with him, the Planning Service had agreed to tighten their procedures in future. The Area Manager conveyed his personal apologies to Mr C for the complaint not having been handled properly.

25. I consider that the Council failed properly to handle Mr and Mrs D's agricultural prior notification submission, representations made by Mr C and his agent, and Mr C's formal complaint. I uphold Mr C's complaint.

Recommendations

26. I recommend that the Council:

- (i) review the circumstances of this complaint with a view to issuing instructions to case officers to enable them to expedite agricultural prior notifications and to deal with representations made by neighbours on proposals where permitted development rights are sought;
- (ii) review the content of their website on communication with those making representations on planning applications generally and the particular circumstances pertaining in respect of agricultural prior notification; and
- (iii) review their handling of this particular complaint with a view to preventing a recurrence of their poor complaint handling.

27. The Ombudsman asks that the Council notify him when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
Mrs C	The complainant's wife
Mr and Mrs D	The non-resident owners of the field adjacent to Mr and Mrs C's property
The Council	Aberdeenshire Council
The Order	The Town and Country Planning (General Permitted Development) (Scotland) Order 1992
Officer 1	The Council's planning case officer
The Consultant	A planning consultant instructed by Mr and Mrs C
Officer 2	The Council's Area Planning Officer
HSE	The Health and Safety Executive
Officer 3	The Council's Head of Development Management and Building Standards
Officer 4	The Council's Planning Manager (Development)