

## Scottish Parliament Region: South of Scotland

### Case 201003487: Dumfries and Galloway Council

#### Summary of Investigation

##### **Category**

Local government: Planning Policy

##### **Overview**

The complainants, a firm of solicitors (Firm C), brought a complaint to my office on behalf of a number of clients. The complaint concerned the way in which Dumfries and Galloway Council (the Council) had reached its decision to identify a particular location as suitable for inclusion in the list of Small Building Groups suitable for limited housing development.

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

The complaints which have been investigated are that the Council:

- (a) failed to act in a consistent and fair manner in assessing the criteria for identifying suitable locations (*upheld*);
- (b) failed to produce adequate reasoned justification for moving a location from the unsuitable list to the suitable list and, in doing so, ignored advice in the committee reports (*upheld*);
- (c) did not adhere to the governance advice provided by Council officers (*not upheld*);
- (d) failed to adequately advise the public of the proposed changes (*not upheld*);
- (e) failed to follow the established procedure of considering each location on its merits in favour of a 'block group' consideration (*not upheld*); and
- (f) failed to handle the complaint adequately (*upheld*).

##### Redress and recommendations

The Ombudsman recommends that the Council:

- |   | <i>Completion date</i> |
|---|------------------------|
| (i) review the manner in which the case was handled to ensure public confidence in public administration and the planning system; and | 18 July 2012           |
| (ii) issue a full and clear apology to Firm C for the failings identified in the handling of the complaint.                           | 20 June 2012           |

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

## **Main Investigation Report**

### **Introduction**

1. Dumfries and Galloway Council (the Council) on 13 April 2010 adopted the Small Building Groups (SBGs) Supplementary Guidance which supports the policies within the Structure Plan and Nithsdale Local Plan (the Plan). This was following a review of the guidance by the Council and as a result of the review, the status of a number of locations changed from being unsuitable as SBGs to being suitable SBGs for limited housing development. The complaint was submitted by a firm of solicitors (Firm C) on behalf of a number of clients who lived around one of the locations (Site A), whose status had changed from being unsuitable to being suitable for limited housing development. Firm C complained that there was no proper basis for the decision taken by the Council to include Site A in the suitable list contained within the published Supplementary Planning Guidance.

#### *Policy context*

2. The Council's General Policy 16 in respect of local plans (GP 16) states that there will be a presumption in favour of small scale housing developments in SBGs identified in Section 3 of the Plan. The Plan lists those SBGs identified as suitable for development and those identified as unsuitable for development.

3. General Policy 16a in respect of local plans (GP 16a) sets out the criteria that SBGs must meet in order to be considered suitable for limited housing development. These criteria are that:

- (a) the group must consist primarily of dwellinghouses forming a clearly identifiable nucleus with strong visual cohesion and sense of place;
- (b) the group must be physically and visually separate from other settlements;
- (c) there are suitable sites, the development of which would conform with and enhance the building group's form, character and appearance and landscape setting; and
- (d) development will not be permitted where it results in the coalescence of settlements or extends a ribbon of development.

4. GP 16a states that, in the lifespan of the Plan, the Council will review the lists of suitable and unsuitable SBGs in order to see (a) whether suitable SBGs have reached their capacity; and (b) whether there has been any material change in circumstances which means that unsuitable SBGs have since become suitable.

5. GP 16a states that the review process will result in the issuing of supplementary guidance which will provide information about potential development sites. This supplementary guidance will be published annually following consideration by the appropriate area committee. The supplementary guidance will subsequently be considered as a material consideration when assessing development proposals.

#### *Chronology of key events*

6. On 10 July 2007, the Council's Planning, Housing and Environment Services Committee (the PHES Committee) agreed:

- to conduct a review of SBGs;
- to advertise the review in all local newspapers, giving six weeks for members of the public to suggest changes to the suitability of existing SBGs and to suggest new SBGs not previously surveyed;
- that a revised list of suitable SBGs would be presented to the relevant area committee before allowing a six week consultation period on the revised list; and
- to consider all responses to the public consultation before agreeing the final revised list of suitable and unsuitable SBGs.

7. On 7 August 2007, the Council carried out a six week consultation, inviting members of the public to make suggestions on the existing list of suitable and unsuitable SBGs and proposals for the inclusion of any additional SBGs.

8. On 14 November 2007, the Council's Nithsdale Area Regulatory Committee (the Area Committee) agreed that a special meeting should be convened to consider the review of SBGs.

9. On 22 February 2008, the Area Committee considered a report (Report 1) from planning officers making recommendations about which SBGs were suitable or unsuitable under GP 16 and GP 16a. Report 1 stated that Site A was unsuitable, had not been subject to material change and had been considered at the Plan Public Local Inquiry and dismissed.

10. Report 1 went on to state that, if the Area Committee wished to amend the list proposed by officers, clear reasons would have to be given and justification provided with reference to GP 16a. If a change to a SBG from unsuitable to

suitable was proposed, then the Area Committee would have to state what material circumstances had changed since the original decision to identify it as unsuitable was taken.

11. The Area Committee decided, against Report 1's recommendation, that 'Site A should be included in the Supplementary Planning Guidance as Suitable and sites were available on the North side of the old A75'.

12. On 4 May 2008, a six week public consultation exercise was carried out with regard to the revised list of suitable and unsuitable SBGs agreed by the Area Committee.

13. On 27 November 2008, the PHES Committee considered a report (Report 2) summarising responses to the consultation and providing an analysis of those area committee recommendations which were contrary to officer recommendations. Report 2 stated that a standard script had been read out at each area committee meeting, which made clear that if changes were proposed to suitable or unsuitable lists, clear reasons would have to be given which related directly to compliance with the terms of GP 16a. Report 2 stated that in a number of cases this advice had not been followed by area committees.

14. Report 2 listed Site A as one of the SBGs whose status had been changed from unsuitable to suitable without appropriate reasons being given. It also pointed out that Site A was one of the areas that had been considered as part of the Public Local Inquiry into the Plan. Report 2 made clear that any changes to sites which the Public Local Inquiry had considered unsuitable would need to state that material changes had occurred since the inquiry.

15. Report 2 stated that changing the status of SBGs without sufficient justification could lead to the threat of legal challenge. It also pointed out that the scale of changes recommended for the Nithsdale area might require a Strategic Environment Assessment (SEA) to be carried out.

16. Report 2 provided a detailed summary of the representations made by members of the public, including Firm C, during the public consultation. A similarly detailed response was provided by Council officers. This concluded that there had been no material change in respect of Site A and that it should remain in the list of SBGs unsuitable for development.

17. Following consideration of Report 2, the PHES Committee decided to defer a decision on the recommendations of the Area Committee pending submission of a further report on the possibility of a SEA being carried out.

18. On 13 January 2009, the PHES Committee considered a report (Report 3) from council officers which stated that the number of changes proposed in the Nithsdale area would require a SEA to be carried out. Report 3 restated the recommendations of Report 2; with regard to Site A it stated that no material changes had occurred and that it should be identified as unsuitable for development. Report 3 stated:

'It is the opinion of officers that it is not appropriate to overturn the accepted small building group lists unless there have been clear material changes in circumstance related to the criteria of the adopted policy, particularly in such cases where the issues have already been dealt with in detail at a public inquiry.'

19. Following consideration of Report 3, the PHES Committee decided to agree the recommendations made by the Area Committee at its meeting on 22 February 2008 (which included the recommendation that Site A be deemed suitable) and agreed that these recommendations would have a minimal environmental impact and would not require a SEA. The Committee asked that the SEA Gateway be informed accordingly.

20. On 9 June 2009, the PHES Committee considered a report (Report 4) which provided an update on the SEA and noted that intimation had been received regarding a potential action for judicial review with regard to the PHES Committee's decision of 13 January 2009 to accept the recommendations of the Area Committee's meeting on 22 February 2008.

21. Report 4 stated that the potential challenge was essentially on two grounds. The failure to follow the correct procedure set out in GP 16a for transferring from the Unsuitable list to the Suitable list and the failure to follow the correct procedure set out in the Environmental Assessment (Scotland) Act 2005. Elected members were advised that it was the failure to identify a material change in circumstances and to state reasons for the decision to move groups from the Unsuitable list to the Suitable list, which made the decision susceptible to challenge by judicial review, on the grounds that the Council had failed to follow the correct procedure set out in GP 16a for transferring from the 'Unsuitable' list to the 'Suitable' list.

22. Report 4 further stated that after writing to the SEA Gateway, responses had been received from the Scottish Environmental Protection Agency (SEPA), Historic Scotland (HS) and Scottish Natural Heritage (SNH). It stated that SEPA and HS had responded that the impact of changes proposed by the Area Committee would be more than minimal and would require screening. SNH were content with the Council's proposals.

23. Report 4 recommended that the PHES Committee should agree not to give effect to their decision of 13 January 2009 and, instead, remit consideration of the matter to the Area Committee. This was because the decision was currently open to legal challenge. Report 4 suggested that the PHES Committee should request that, wherever recommendations went against officer recommendations, the Area Committee should:

'In each case identify any material change in circumstances through which an SBG has become suitable or unsuitable, and state reasons for their recommendation and identify any appropriate site or sites within a group.'

24. Following consideration of Report 4, the PHES Committee agreed to (i) note the legal and governance advice which had been provided and as a consequence (ii) not to give effect to the decision taken by the PHES Committee of 13 January 2009 and to (iii) remit the matter to the Area Committee for further consideration of the SBG's where the Area Committee recommended moving the SBG's between lists against the recommendation of officers, with the request that the Area Committee identify any material change in circumstances, in each case, state reasons for their recommendations and identify any appropriate site or sites within a group.

25. On 15 July 2009, the Area Committee considered a report (Report 5) which asked the Area Committee to consider cases where they had made recommendations against officer recommendations and identify in each case what material changes in circumstances had occurred.

26. Following consideration of Report 5, the Area Committee agreed (against officer recommendations) that Site A should be listed as suitable. In reaching this decision, the Area Committee noted that constraints to development, notably the removal of overhead power lines and the relocation of a water main and an improvement to access had been effected.

27. Following this decision, a further six week consultation period to allow the public to provide comments on the Area Committee recommendations, ending on 11 September 2009, took place.

28. On 13 October 2009, the PHES Committee considered a report (Report 6) which brought back the 22 SBG items referred back to the Area Committee on the 9 June 2009 by the committee to correct defects in the decision making process.

29. Report 6 described the outcome of the Area Committee's consideration and summarised the results of the public consultation. Report 6 stated that the Area Committee had been asked to 'correct defects in the decision making process' which had initially occurred.

30. With regard to Site A, Report 6 provided a detailed summary of representations received and Council officers' responses. Report 6 recommended that Site A remain on the unsuitable list, on the grounds that no material change had occurred since the decision to identify it as unsuitable.

31. Following consideration of Report 6, the PHES Committee decided to agree the recommendations of the Area Committee of 15 July 2009.

32. On 13 April 2010, the PHES Committee considered a report (Report 7) which outlined the outcome of the SEA process following the Council's decision. Report 7 stated that consultation authorities and SEA Gateway had decided that the plans agreed by the PHES Committee were unlikely to result in significant environmental effects.

33. Following consideration of Report 7, the PHES Committee agreed that the revised lists of suitable and unsuitable SBGs agreed at its meeting of 13 October 2009 should be published as Supplementary Planning Guidance and constitute a material consideration in the assessment of future development proposals.

34. The complaints from Firm C which I have investigated are that the Council:  
(a) failed to act in a consistent and fair manner in assessing the criteria for identifying suitable locations;

- (b) failed to produce adequate reasoned justification for moving a location from the unsuitable list to the suitable list and, in doing so, ignored advice in the committee reports;
- (c) did not adhere to the governance advice provided by Council officers;
- (d) failed to adequately advise the public of the proposed changes;
- (e) failed to follow the established procedure of considering each location on its merits in favour of a 'block group' consideration; and
- (f) failed to handle the complaint adequately.

### **Investigation**

35. The investigation is based on extensive information supplied by Firm C, the Council's responses to enquiries, scrutiny of information publicly available on the Council's website, and advice provided by the SPSO's planning adviser.

36. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Firm C and the Council were given an opportunity to comment on a draft of this report.

**(a) The Council failed to act in a consistent and fair manner in assessing the criteria for identifying suitable locations; (b) The Council failed to produce adequate reasoned justification for moving a location from the unsuitable list to the suitable list and, in doing so, ignored advice in the committee reports; and (c) The Council did not adhere to the governance advice provided by Council officers**

37. I am dealing with complaints (a), (b) and (c) together because they are closely linked.

#### *Firm C's complaint*

38. Firm C argued that, in reaching the decision that Site A was suitable for limited housing development, both the Area Committee and the PHES Committee had failed to (a) provide clear reasons which demonstrated compliance with GP 16a; and (b) clearly state what material change in circumstances had occurred since the decision that it was unsuitable.

39. Firm C argued that, even after the PHES Committee had referred the matter back to the Area Committee and even after the repeated advice of council officers, neither Committee had explained how the inclusion of Site A in the list of suitable SBGs complied with GP 16a, what material change had

occurred to justify the decision and why the view of outcome of the Public Local Inquiry (which had been accepted by the Council) should be departed from.

40. Firm C argued that the changes eventually referred to by the Area Committee, and accepted by the PHES Committee, relating to the removal of overhead power lines, the relocation of a water main and an improvement to access did not constitute material changes in terms of GP 16a. They said that, in the case of the water main, there was no evidence that a water main had been relocated and, in the case of the overhead power lines, these had been removed prior to the Council's original decision that Site A was unsuitable. They pointed out that Report 5 had made clear that just because a change had occurred in a location, this did not mean that it would necessarily be a material change in respect of GP 16a.

41. Firm C further argued that, even if a material change had occurred at Site A, the terms of GP 16a still had to be met with regard to the characteristics SBGs had to have in order to be considered suitable for limited housing development. The four criteria that SBGs have to meet have been described at paragraph 3 above.

42. Firm C said that, during the Plan Public Local Inquiry, the reporter had concluded that criterion (paragraph 3) (a) had not been met because Site A involved scattered houses and did not have a clear nucleus or strong sense of place. The reporter was also concerned that development at Site A could lead to ribbon development along the former trunk road, which he felt could be problematic in relation to criterion (d). Finally, Firm C pointed out that the reporter had concluded new housing could not occur with Site A in such a way as to enhance the building group's form, character, appearance and landscape setting thereby meaning that criterion (c) could not be met.

43. Firm C said that, in order for changes to be considered material, they had to relate directly on those matters previously relied on by the Council and the reporter in making the original decision that Site A was unsuitable. They pointed out that the changes referred to by the Area Committee and accepted by the PHES Committee did not address the concerns identified by the Council and the reporter.

44. With regard specifically to the actions of Council officers, Firm C stated that they did not do enough to bring to the Area Committee's and the PHES

Committee's attention what was required in order for a change to be considered a 'material change of circumstances'. They also pointed out that more information about the reporter's decision should have been given earlier in the process to the Area Committee in order to inform its decision-making.

*The Council's response*

45. The Council accepted that no clear reasons were provided to support the original decision reached by the Area Committee (on 22 February 2008) and the PHES Committee (on 13 January 2009).

46. The Council said, however, that when the Area Committee re-visited its decision in July 2009 it did provide reasons for the decision which provided '... a reasonable basis on which the Council could agree that Site A should be included in the Supplementary Planning Guidance, in accordance with GP 16a as 'suitable' ...'.

47. The Council said that, in retaking their decision, their position was that they had given due regard to legal advice they had received, as well as listening to the views of all interested parties and that they had also undertaken a proper screening of the procedure involved in formulating their decision in the matter of grounds for moving Site A from the Unsuitable to the Suitable group.

48. The Council said that the public consultation which had been carried out throughout the SBG review process had pointed to material changes occurring since the reporter's decision that Site A was unsuitable (improved access and undergrounding of power lines).

49. The Council acknowledged that a fully documented explanation of the reasons why they had reached the conclusions they had and the timeframe these took place in with regard to Site A would have been helpful. However, the Council said that a full debate had occurred both at the Area Committee and the PHES Committee and that, ultimately, council members had exercised their judgement.

50. The Council said that, while Firm C might disagree with the outcome, they had taken action to correct a procedural defect which had originally occurred.

*SPSO Planning Advice*

51. My complaints reviewer sought advice from my planning adviser (the Adviser) on the issues being raised in complaints (a), (b) and (c).

52. The Adviser said that he felt the information provided to the Area Committee and the PHES Committee by council officers was sufficient. He said that officers could not be expected to anticipate every alternative that an elected member might want to pursue and that it was for elected members, as decision makers, to ask for more information if they wished to introduce alternatives to the options suggested by officers. He also noted that, in this case, officers took the opportunity to introduce further evidence as the SBG review progressed. The Adviser noted that Report 6 was unusually forthright with regard to setting out the factors weighing against the committee's previously expressed preferred position. He said that there was no evidence to support Firm C's suggestion that officers had not done enough to make the councillors aware what was required of them.

53. While the Adviser was satisfied that the Council's officers had acted appropriately with respect to the issues raised in the complaint, and he was satisfied that there was no significant fault in the way in which statutory procedures were addressed by the Council as a whole in the final analysis, he expressed concern about the decision of the Council to list Site A as suitable for development. He said that, in his opinion, the infrastructure issues which the Council had addressed as the material change in circumstances for Site A (overhead power lines, water main and access) did not relate to GP 16a. He said that constraints on development from an infrastructure perspective could be material considerations for planning as they have a strong bearing on the use and development of land. However, he said that the accepted tests established by the courts for material planning considerations were twofold (1) that they relate to the use and development of land and (2) that they are relevant to the circumstances of the case.

54. The Adviser said that, in his opinion, the infrastructure issues referred to by the Council could not be considered relevant to the circumstances of the case, given GP 16a demands reference to four specific criteria and does not refer to infrastructure.

*(a) Conclusion*

55. Having carefully considered all the available evidence, including the advice from the Adviser, I have not seen evidence of procedural fault in the process (the review of the SBG) followed by the Council leading to the final decision.

56. The evidence contained in the planning reports and the committee minutes (including the Adviser's comments) indicates that the committee's decision does not comply with the terms of GP 16a. However, it is equally clear that elected members were aware of the officers' advice on this case prior to taking what was a discretionary decision. While departing from advice provided by officers is not problematic in itself, what I have had to consider is whether the committee failed to provide adequate reasons for their decision in this case.

57. The Council recognised that the committee's original decision was flawed procedurally because no reasons were provided to justify the decision. The Council considered that revisiting the decision and providing reasons relating to infrastructure issues was sufficient to correct the defects in the original decision.

58. The Council explained that, in retaking the decision, elected members had given reasons why the committee had taken the view that there had been a material change of circumstances and had undertaken a proper screening of the procedure involved in formulating its decision.

59. The proposals were put before the PHES Committee on 13 October 2009, and divided the opinion of councillors. Ultimately, the democratic decision of elected members was to approve the recommendations of the Area Committee of 15 July 2009 on the 22 locations by ten votes to five votes. In my view the PHES Committee reached the decision in full consideration of all relevant information.

60. The committee, in reaching their final decision, provided reasons which they considered justified their decision and while I recognise that Firm C disagreed with those reasons as I explained above, this was a discretionary decision. However, it appears to me that the whole decision making process became unnecessarily cumbersome because of the initial failure to identify a material change in circumstances and to state reasons for the decision to move groups from the Unsuitable list.

61. I also consider that, given the matter was subject to further public consultation and further consideration by officers, it would have been good administrative practice had the PHES Committee at its meeting on 13 October 2009, when confirming the decision of the Area Committee, clearly demonstrated that consideration had been given to the outcome of the public consultation and the officers' responses to the Area Committee and representations received. I consider that it is important that public confidence is not undermined by poorly explained decisions. The advice I have also received is that the reasons provided for moving Site A from the Unsuitable to Suitable list did not relate to policy GP 16a. I appreciate that the Area Committee considered these were material changes and provided reasons why they were material and met the criteria set out under GP 16a. However, I believe that this could have been more fully documented and explained and I note that this has been acknowledged by the Council (see paragraph 49). As stated above, in doing so, this should ultimately lead to greater confidence in the decision making process.

62. In view of the procedural failings identified in relation to the original decision, I uphold complaint (a) and I make the following recommendation.

*(a) Recommendation*

63. I recommend that the Council:	<i>Completion date</i>
(i) review the manner in which the case was handled to ensure public confidence in public administration and the planning system.	18 July 2012

*(b) Conclusion*

64. The conclusion I have reached above similarly applies to this head of complaint and accordingly, I uphold complaint (b).

*(b) Recommendation*

65. Given the recommendation made above, I make no further recommendations here.

*(c) Conclusion*

66. With regard to the actions of council officers, I am satisfied that they provided sufficient information to both the Area Committee and the PHES Committee to inform and support their decision-making. Council officers consistently alerted both committees to the legal and policy requirements with

which their decisions had to comply. I have no criticism to make of the Council in this regard and I agree with the Adviser's view that officers were forthright in presenting relevant information to the committees. In these circumstances, I do not uphold the complaint.

**(d) The Council failed to advise the public adequately of the proposed changes**

67. Firm C stated that the minute of the meeting of the Area Committee of February 2008 provided an inadequate explanation for the proposed change in the classification of Site A. They complained that this was completely unsatisfactory and wholly inadequate in advising how the decision was reached. Firm C argued that as a result there was an inconsistent approach to decision making by members of the Area Committee.

68. Firm C also stated the minutes and reports which were placed on the Council's website and local libraries were relatively short. They argued that the procedure required the public to access, interpret and digest a complex committee report and minute, in order to establish if their locality was likely to be affected. Furthermore, Firm C referred to the adequacy of the press advertisements.

69. Report 6 considered at the PHES committee on 13 October 2009 provided a summary of representations received following the public consultation exercises in 2008 and 2009. The representations included concern about the adequacy of the committee reports and minutes and the newspapers notices.

70. Report 6 detailed the officers' consideration of the representations received. Elected members were advised that the reports and minutes of the Area Committee meetings were available both on the internet and at local libraries. Where members of the public were unable to gain access to either the internet or library, special arrangements were put in place by which they received the relevant extracts of the reports. Report 6 explained that the minutes of the meeting were relatively short documents and contained a full list of recommendations agreed by members of the Area Committees. Consideration had been given to including these lists in the press adverts for the consultation period, but this had been discounted. The report explained that officers had been accommodating in replying to individual queries and providing further information and guidance both in person and by telephone to members of the public that had requested such assistance.

*(d) Conclusion*

71. In the complaint to my office, reference was made to the minute of the Area Committee of 22 February 2008. Having considered the minute, it does not provide detailed reasons for the decision being taken at that time, however, the matter was subsequently considered at a number of meetings and, as indicated above, in response to concerns about the failure to record reasons for the decision, the Council agreed to revisit and review the procedures which they had followed in reaching their earlier decision.

72. While the minutes are relatively short, minutes are not verbatim records of what is said. They should be a record of the points which were discussed during the course of a meeting, the outcomes of these discussions and any further action relating to these points.

73. Having carefully considered the available evidence, I am satisfied that the concerns raised about the adequacy of the information given to elected members and the public was considered by elected members. The issues under consideration were subject to public consultation and I have seen no evidence that the Council failed to advise the public of the proposed changes. In these circumstances, I do not uphold the complaint.

**(e) The Council failed to follow the established procedure of considering each location on its merits in favour of a 'block group' consideration**

74. Firm C complained that the Council had abandoned the established procedure of considering each location on its merits, in favour of a block group consideration, at the meeting of the PHES committee on 13 October 2009.

75. While previous meetings had considered all the locations on an individual basis, at the PHES committee meeting on 13 October 2009 elected members decided on a division to consider all 22 sites as a block item. This was a discretionary decision for the Council to take.

*(e) Conclusion*

76. I have seen no evidence of maladministration in relation to this matter and I do not uphold the complaint.

**(f) The Council failed to handle the complaint adequately**

77. When responding to the complaint, the Council accepted that it was the lack of response to the earlier complaints which had prompted Firm C to approach my office. The Council's letter went on to explain that it was regrettably a matter for which Firm C were owed an apology. However, it is not clear from the Council's letter whether the Council did in fact tender an apology.

78. The Council explained that there was a need for them to identify the key lessons which could be learned from the complaint regarding this matter. My complaints reviewer raised this matter with the Council. I have been advised that the complaint was largely handled prior to the Council's Corporate Complaints Unit being formed. Since the unit took responsibility for corporate complaints, a number of activities have taken place to improve their complaints handling. I have been provided with details of the action taken, including introducing a number of new activities to assist improved compliance with corporate timescales and standards across the Council, including: regular quality monitoring; monthly performance reports to Directors; fortnightly performance reports to the Chief Executive; and improvements to the complaints database to assist with the tracking of complaints.

*(f) Conclusion*

79. It is clear that the Council failed to reply to many of the letters sent to them and that the Council on a number of occasions apologised for the delay in replying to Firm C. In all the circumstances, I uphold the complaint.

*(f) Recommendation*

80. I recommend that the Council:	<i>Completion date</i>
(i) issue a full and clear apology to Firm C for the failings identified in the handling of the complaint.	20 June 2012

81. 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**

The Council	Dumfries and Galloway Council
The Plan	Nithsdale Local Plan
SBG	Small Building Group
Firm C	The complainant
Site A	The location identified as being suitable for limited housing development
GP 16	A local plan general policy for the development within identified Small Building Groups
GP16a	A local plan general policy for the identification of Small Building Groups
The PHES Committee	The Council's Planning, Housing and Environment Services Committee
The Area Committee	The Council's Nithsdale Area Regulatory Committee
Report 1	Report by Service Manager Development and Strategic Housing considered at the Nithsdale Area Regulatory Committee on 22 February 2008
Report 2	Report by Service Manager Development and Strategic Housing considered at the Planning Housing and Environment Services Committee on 27 November 2008

SEA	Strategic Environmental Assessment
Report 3	Report by Service Manager Development and Strategic Housing considered at the Planning Housing and Environment Services Committee on 13 January 2009
Report 4	Report by Service Manager Development and Strategic Housing considered at the Planning Housing and Environment Services Committee on 9 June 2009
SEPA	Scottish Environmental Protection Agency
HS	Historic Scotland
SNH	Scottish Natural Heritage
Report 5	Report by Service Manager Development and Strategic Housing considered at the Nithsdale Area Regulatory Committee on 15 July 2009
Report 6	Report by the Director Economic Regeneration considered at the Planning Housing and Environment Services Committee on 13 October 2009
Report 7	Report by the Director Economic Regeneration considered at the Planning Housing and Environment Services Committee on 13 April 2010
The Adviser	SPSO Planning Adviser