

## Scottish Parliament Region: Highlands and Islands

### Case 200501452: Argyll and Bute Council

#### Introduction

1. On 31 August 2005 the Ombudsman received a complaint from a woman (referred to in this report as Mrs C) that Argyll and Bute Council had approved a planning application to develop a site adjacent to her home, despite her contention that she would lose privacy and be overlooked.

2. The complaints from Mrs C which I have investigated concerned:

(a) an allegation that her objections to the planning application on the grounds that she would lose privacy and that her garden would be overlooked were given insufficient weight;

(b) the Area Committee's decision to decline to view the development site from her home; and

(c) an allegation that as a consequence of (b) and as she had no representation at councillor level, she was denied full representation on the matter, contrary to natural justice.

3. Following the investigation of all aspects of this complaint I came to the following conclusion(s):

(a) not upheld, see paragraphs 8 to 14;

(b) not upheld, see paragraphs 8 to 15;

(c) not upheld, see paragraphs 16 to 17;

4. In the light of these findings the Ombudsman does not propose taking further action.

### **Investigation and findings of fact**

5. The investigation of this complaint involved obtaining and reading all the relevant documentation including reports to the Area Committee, extracts from the Dumbarton District Wide Local Plan and letters of objection. I have also had sight of a location plan for the development concerned and the Ethical Standards in Public Life etc (Scotland) Act 2000.

6. The Ethical Standards in Public Life etc (Scotland) Act 2000 provides for the introduction of Codes of Conduct for local authority councillors and members of relevant public bodies; imposes on Councils and relevant public bodies a duty to help their members to comply with the relevant Code; and Establishes a Standards Commission for Scotland to oversee the framework and deal with alleged breaches of the Code. The Act requires the issue of a Code of Conduct for councillors which was prepared by COSLA at the invitation of Scottish Ministers and was approved by the Scottish Parliament. Relevant sections in relation to this investigation include: '1.3 This Code applies to every member of a local authority in Scotland. As a councillor, it is your responsibility to make sure you are familiar with, and that your actions comply with, its provisions', and '7.11 If you have an interest, whether financial, non financial, or personal, in the outcome of a decision on a planning application, or a planning agreement, or on taking enforcement action, you must declare that interest and refrain from taking part in the consideration of the application'.

7. I have set out, for each of the three heads of Mrs C's complaint, my findings of fact and conclusions and while I have not included every detail investigated, I am satisfied that no matter of significance has been overlooked. Mrs C and the Council have been given an opportunity to comment on a draft of this report.

**(a) Mrs C's objections to the planning application on the grounds that she would lose privacy and that her garden would be overlooked were given insufficient weight; and**

**(b) The Area Committee's decision to decline to view the development site from her home**

8. On 16 March 2005 the Council received a planning application from the owners of the site next to Mrs C's house to build in the garden ground of their property and on 4 April 2005, Mr C objected saying that the proposed development

would result in overlooking and a loss of privacy. Another neighbour and the local Community Council also objected and these representations were summarised in a report dated 15 June 2005 for presentation to the Area Committee meeting of 1 July 2005 when the application was to be determined.

9. I have read the report (and have seen the attached plans) in which the Head of Planning described the proposed development as a two storey house in the garden of the applicant's existing home. The Head of Planning took the view, after considering the proposals in terms of the Dumbarton District Wide Local Plan (including window to window separation), that the proposals did not conflict with this. Although the development was in a residential area, he said that the proposed site was 1000 square metres with a garden depth of 22 metres, which was similar to that of the existing house next door to Mr and Mrs C. The proposed house would be located 4 metres from the side site boundaries. Notwithstanding the complainant's husband's objections, the Head of Planning did not consider that there would be unacceptable overlooking of the C's house.

10. On making my enquiries, the Council explained to me in a letter from the Chief Executive of 16 November 2005 that when issues of overlooking and privacy are raised, they are examined in particular ways. The first is in regard to window to window distances between habitable rooms of adjoining properties and in this case, the window to window separation between the proposed house and the existing properties was considered satisfactory. The Council accept that the question of overlooking and loss of privacy are subjective, but point out that in regard to this application, both the Case Officer and the Area Team Leader made separate visits to the house. While neither visited Mrs C's property and viewed the development site from there, they each considered that they were able to assess the potential loss of privacy from the applicant site. It was considered that any overlooking from the new property would be within acceptable limits and would not have a detrimental impact on the neighbouring property. The Head of Planning, therefore, recommended that the application be approved.

11. Meanwhile Mrs C says that as her husband, who is the local councillor, declared an interest, she began pursuing the matter and wrote on 24 June 2005 reiterating his objections and requesting a site visit. These representations were circulated to the Area Committee by way of a supplementary report dated 27 June

2005 in which the Head of Planning asked the Committee to note the representations, but he took the view that his original recommendation to approve the application should remain unchanged.

12. The principal and supplementary reports were presented to the Area Committee on 1 July 2005 (together with another verbal report of an objection dated 28 June 2005) and a slide presentation was made by the Area Planning Team Leader. Nevertheless, the Area Committee decided to exercise its discretion and approve the application subject to conditions.

13. The Chief Executive explained in his letter of 16 November 2005 that in order to provide as much information as possible, the Area Committee also has the benefit of slide presentations and in accordance with this practice, such a presentation was made by the Area Team Leader. The Chief Executive also made the point that having regard to the representations made, together with all other relevant information and planning considerations, it is a matter for the Area Committee to exercise its discretion concerning site visits. In relation to the approval of the application itself, he says the Area Committee was in possession of all the relevant facts and materials and gave proper consideration and due weight to these.

14. Mrs C says that because the Council did not agree to her request for a site visit, they did not give sufficient weight to her objections. It is her view that Council officers and the Area Committee members would not have a proper appreciation of the effect of the development on her home unless they viewed it from there. However, it is clear that officers were fully aware of the relationship between the development site and Mrs C's house and both the Case Officer and the Area Team Leader had visited. Their views were passed to the Area Committee who had the benefit of a slide presentation. Similarly, I am satisfied from the Chief Executive's letter of 16 November 2005 that the Area Committee were clear with regard to their responsibilities, and from the various reports and representations, were fully appraised of the situation. I do not uphold this complaint.

15. The Area Committee were made aware of Mrs C's request to view the site from her home but they decided not to do so. This is a matter for their discretion, the merits of which are not open to me to question given that I am satisfied that

they were fully aware of all the relevant facts and of the depth of Mrs C's feelings in the matter and those of her neighbour. In the circumstances, I do not uphold this aspect of the complaint.

**(c) As a consequence of (b) and as she had no representation at councillor level, she was denied full representation on the matter contrary to natural justice**

16. Mrs C believes that as a consequence of the Area Committee's failure to view the development site from her property and the fact that her local councillor (her husband) had declared an interest, she was denied natural justice. She has not been specific about this but I am satisfied that having reviewed all the evidence, her representations were fully and properly considered. However, despite these, councillors chose to exercise their discretion and grant planning permission. This, in itself, is not maladministration or service failure. Accordingly I do not recommend further action on this matter.

17. Mrs C also maintains that her husband, who is a local councillor, declared an interest and hence she was deprived of representation at council level. But in circumstances like this, it is part of the councillors' Code of Conduct, (see paragraph 6), that he should do so. Amongst other things the Code regulates how councillors deal with planning applications and makes it clear that they should not act as advocates to promote a particular recommendation on a planning application. If councillors who are considering planning applications wish to align themselves for or against a specific application, they must declare an interest and not take any further part in discussions and indeed, leave the meeting room. Therefore, the councillors' Code makes it clear that in dealing with planning applications councillors must not 'represent' the interests of applicants or objectors. Taking this into account I cannot conclude that Mrs C was denied proper representation. No one has the right to have their interests represented by a councillor in the consideration of a planning application. Mrs C may not be happy with the application of the Code, but the Code and its application are not matters for this office to investigate. Nevertheless, in this case, the Area Committee were fully aware of all the relevant facts of Mrs C's objections and of her request for a site visit. For these reasons I do not uphold this aspect of her complaint.

**Further action**

18. As noted in paragraph 3, the Ombudsman does not propose taking any further action on this complaint

28 March 2006