

Scottish Parliament Region: Highlands and Islands

Case 200600763: The Highland Council

Summary of Investigation

Category

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

Overview

The complainant, Mr C, raised a number of concerns about the planning advice given to him concerning a plot of land he wished to purchase.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) Mr C was not given an explanation for the reasons why the development plot was affected by a change of circumstances or why the definitive advice given to him in October 2004 did not apply (*not upheld*);
- (b) Mr C's objections to planning permission were not taken into account and he was not advised that planning permission was granted on 6 April 2006 (*upheld*); and
- (c) the Council delayed in responding to Mr C's correspondence (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council emphasise to staff that care should be taken in responding to correspondence and that replies given to members of the public address the concerns raised and be made in a timely fashion. She also recommends that the Council apologise to Mr C for failing to advise him from the outset that planning permission had been granted.

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

Main Investigation Report

Introduction

1. On 3 September 2007, the Ombudsman received a complaint from Mr C about the planning advice given to him by The Highland Council (the Council) with regard to a plot of land he wished to purchase for development. He said that in August 2004 he paid a deposit for a plot of ground (the Plot) within a larger development site and that in October 2004 he discussed the possibilities for the Plot with one of the Council's Planning Officers (the Planning Officer). When he did so, he said he was given the definite impression that, as a design brief (the Design Brief) formed part of the planning permission relating to the 82 plots on the site, it would be strictly applied. He said that this was despite the fact that he would have extreme difficulty in building a home on the Plot to meet his aspirations; he said that he was not given the impression of any flexibility. Mr C withdrew from the purchase of the Plot and said that he was then aggrieved to discover, at a later date, that there had been a relaxation in the Council's approach and they had reassessed the type of house that could be built. He complained that he had not been provided with an explanation for the change of circumstances or the reasons why the definitive advice given to him in October 2004 did not apply.

2. On learning about a planning application for the Plot, on 3 April 2006 Mr C submitted objections and corresponded with the Planning Officer about the planning application. However, he complained that, although the correspondence continued, he was not advised that permission had been granted on 6 April 2006. Further, he said that he expressed an assumption in his letter of 19 June 2006 that plans for the Plot would require to be significantly altered but that this was not corrected. Mr C said that he only learned on 3 July 2006 that consent had been given when he visited the Planning Department. He was aggrieved at the Council's failure to inform him about the planning consent and about the fact that, in considering it, his objections were not taken into account. Mr C also complained that, throughout, the Council delayed in replying to his correspondence.

3. The complaints which I have investigated are that:

- (a) Mr C was not given an explanation for the reasons why the development plot was affected by a change of circumstances or why the definitive advice given to him in October 2004 did not apply;

- (b) Mr C's objections to planning permission were not taken into account and he was not advised that planning permission was granted on 6 April 2006; and
- (c) the Council delayed in responding to Mr C's correspondence.

Background

4. The development site, where the Plot in which Mr C was interested was located, represented one part of a wider residential expansion area located outside Inverness. It extended to 44 hectares. Outline planning permission for 550 houses on this site was granted in March 2003. Subsequently, approval of reserved matters was granted in February 2004 and this application included a design brief which was prepared and submitted by the developer as a composite part of the application. Permission related to the entire development area where the Plot was located and involved the formation of 82 individual plots which were to be developed as 'self build'. Planning permission to develop the specific Plot in which Mr C had been interested was granted on 6 April 2006.

Investigation

5. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. I have also had sight of plans for the site; the Design Brief prepared by the developer dated January 2004; a report by the Inverness Area Planning and Building Control Manager, recommending approval of reserved matters for the formation of 82 private plots on the site concerned, which was presented to the City of Inverness and Area Planning Applications Committee on 23 February 2004; and a copy of the permission for reserved matters subsequently granted, dated 27 February 2004. On 11 October 2007 I made a formal enquiry of the Council and received the Council's response on 20 November 2007. Further queries were made on 28 November 2007 and 22 February 2008, the Council's replies being dated 12 December 2007 and 3 March 2008 respectively.

6. While I have not included in this report every detail investigated, 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) Mr C was not given an explanation for the reasons why the development plot was affected by a change of circumstances or why the definitive advice given to him in October 2004 did not apply; and (b) Mr C's objections to planning permission were not taken into account and he was not advised that planning permission was granted on 6 April 2006

7. The Council, in their letter to me of 20 November 2007 (see paragraph 5), said that the principal purpose of the Design Brief was to set out the parameters against which the developer would ensure that individual purchasers would be advised of the scope and extent of what would be acceptable for each plot. They maintained that it established general guidance and included advice on site density, layout, design and materials. While they said that the Design Brief was approved as part of the application for reserved matters, it was lodged by the developer and was not a requisite part of the reserved matters application. Nevertheless, the Council confirmed that the Design Brief embraced sound planning advice and was a material consideration in the assessment of subsequent applications.

8. Permission for reserved matters was granted on 27 February 2004 and each of the plots located to the west boundary of the site and adjoining the gardens of the existing, mainly single storey, houses (including that for which Mr C paid a deposit) were restricted in height to single storey. The Council said this was to protect the amenity of existing residents. In addition, the Council indicated that the original outline permission (see paragraph 5) established a further restriction to development on these particular plots by providing for a 'no build zone'. This extended to eight metres in depth and was, again, to protect the amenity of existing residents. Similarly, the Design Brief identified that the depth of rear gardens should be nine metres. In the light of these conditions, the Council confirmed that, particularly in relation to these boundary plots, a degree of architectural expertise would be necessary to secure 'acceptable and appropriate development which also served to meet the requirements of the eventual occupant'.

9. It was in the face of the above that Mr C said that in August 2004, after he paid a deposit for the Plot, he held discussions with an architect and a kit house (that is, a house of timber frame construction) builder to see what type of house he could develop. He said he made them aware of the Design Brief and the terms of the planning permission granted and was subsequently told that, due to the planning criteria and the size of the plot, it would be difficult to accommodate the type of house he wanted. He said that he, therefore, met

with the Planning Officer in October 2004 in the hope that she would be able to advise him further. However, he said that he was given no indication of flexibility and he was told that all conditions would have to be strictly adhered to. Mr C said that, very reluctantly, he had to instruct his solicitor to withdraw from the purchase of the Plot as he could not risk investing in a venture that could 'possibly put me in a negative equity situation'. He added that this was one of the hardest decisions he had ever made.

10. However, in March 2006, Mr C said that as he saw a planning application for the Plot, he submitted written objections on 3 April 2006 (which were acknowledged the same day) as the footprint of the house encroached on the nine metre garden area to the rear and the garage encroached on the eight metre 'no build zone' on the western boundary. He was aggrieved because he said that the new owners of the Plot had essentially submitted plans for the type of house he had wanted and yet he had been firmly advised by the Planning Officer that such a development would not be allowed. Mr C said that he then began a correspondence with the Planning Officer but that she failed to provide him with an acceptable explanation for what he considered to be a reversal of the Council's position.

11. On 7 May 2006 Mr C made enquiries about the objections he had made to the planning application (see paragraph 10) and the Planning Officer replied on 8 May 2006, emailing him saying, 'My apologies for the delay – will attend to it as soon as possible'. This was followed by a letter of 9 May 2006 from the Planning and Building Standards Area Manager (the Area Manager), (although apparently written by the Planning Officer in the first person and giving her as contact). The reply referred to Mr C's letter of objection and apologised for the delay in reverting to him. It also mentioned the various planning permissions affecting the Plot and, with regard to the Design Brief, said that 'I would confirm that this was approved as part of the planning submission seeking approval of Reserved Matters'. It went on, 'I would advise of course a detailed application must be treated on its individual merits, and that, in the normal course of events, strict adherence to these established parameters would be required'.

12. Mr C was not satisfied with the response, as he felt it had not answered the specific points raised in his representations; that the planning application submitted for the Plot was contrary to the advice given to him by the Planning Officer in October 2004 and that it was against what he said were the mandatory requirements of the Design Brief. He requested further clarification

by letter of 10 May 2006, which was acknowledged the next day with a commitment to respond in more detail. However, as he received no further correspondence, Mr C sent the Planning Officer a reminder on 7 June 2006. She replied on 12 June 2006 apologising for the delay and saying, '... there is no strict policy - but a condition was attached to the original outline permission and I will send a copy of that condition to you ...'.

13. On 15 June 2006 the Area Manager wrote to Mr C (although once more written in the first person by the Planning Officer) rehearsing the situation with regard to planning permissions granted and the Design Brief, again emphasising that applications were considered on their individual merits and that 'the purpose and objective of these development restrictions has formed a key consideration in the assessment of proposals'. Given this, Mr C took the letter to mean that the planning application for the Plot (and another he had also mentioned) would have to be significantly altered and on 19 June 2006 he replied to the Planning Officer in these terms. The Planning Officer subsequently sent an apology for her delay in responding (on 29 June 2006) saying, amongst other things, that the applicant was currently assessing a revised layout and that would probably involve a re-notification of neighbours. This message was headed with the addresses of both the Plot and the other property Mr C had mentioned in his query.

14. Mr C visited the Planning Department on 3 July 2006 and, at this point, learned that the Plot had received planning permission on 6 April 2006. He, therefore, complained to the Chief Executive on 5 July 2006. The Director of Planning and Development (the Director) replied on 10 August 2006 going into the background of the Plot; detailing the outline planning permission granted for the wider area and the permission for reserved matters subsequently granted (see paragraphs 7 and 8). He said:

'This planning permission was approved in 2004, but in accordance with the terms of the outline planning permission, required the developer to provide a Design Brief as an integral element of the planning submission [but see paragraph 7]. This Design Brief (prepared and submitted by the developer) was approved as part of the planning submission and essentially set out the design parameters against which applications would be assessed in conjunction with the more general and standard Council development control criteria.'

15. The Director said that he had checked the various plot permissions granted and confirmed that the site restrictions had, generally, been met. With regard to the Plot, he said that the position of the house, for which permission had been granted, had been altered in order to increase the depth of the rear garden. He acknowledged that the rear garden at eight metres did not meet the nine metre stipulation and further recognised that, while the house was located outwith the eight metre 'no build zone', part of the garage did extend into that area. However, he commented that it was significant that none of the residents directly affected by the proposal had objected and said that the purpose of the guidelines had been to ensure that an appropriate development was achieved on the Plot, rather than to 'impose the mandatory restriction in an otherwise arbitrary manner'. The Director supported the advice given to Mr C in October 2004 and said that, at the time it was given, it was based on the correct facts and that it had been left open to Mr C to discuss the Plot with an architect in order to achieve an appropriate development. He said it was not for the Planning Officer to undertake design but to offer guidance and relevant information. He confirmed that plots like that in which Mr C had been interested had been difficult but that it had been possible to achieve layouts that were acceptable. On the matter of Mr C's specific objection (made on 3 April 2006), he apologised but said that it had not been 'picked up' before planning permission was issued. As a consequence, Mr C had not been notified of the decision. He said that this lapse in procedure should not have occurred and that the Area Manager had been asked to ensure that procedures were adhered to in order to avoid a recurrence of the situation.

16. Later, another letter, from the Head of Planning and Building Standards (dated 11 October 2006), further explained that the difficulties which arose for Mr C may not have been because he was advised that he could not build the house as he had wished but because the house sites had been developed in an alternative manner to allow the larger house types selected by the individual developers. He said that it had not been until a later date (that is, after October 2004) that one of the plot purchasers overcame the constraints of development by turning the house within the plot. This had the effect of protecting the privacy and amenity of neighbouring properties (the original reason for the 'no build zone') but, at the same time, allowing an acceptable house to be built. The Head of Planning and Building Standards said that, although he regretted that Mr C felt denied the opportunity to develop the Plot, this had come about through alternative design solutions rather than by any double standards applied by the Planning Officer.

17. In his formal response to me, the Chief Executive added to this explanation. He said:

'Whilst guidance is of course within the remit of the planning officer, technical solutions to a specific problem should properly be addressed by the applicant and his professional advisers where necessary. A planning officer will, in the course of normal duties, offer assistance and assess a proposal in the context of pre-application discussions but cannot provide a site specific solution.'

18. He added that none of the 82 individual plots developed within the site were 'kit' houses but each represented a house type designed specifically for the plot. (Mr C disputed this information when commenting on the draft of this report and I, therefore, made further enquiries. It was confirmed that, like the vast majority of houses in the Highland area, the house specifically mentioned by Mr C was of a timber framed construction, not a standard 'off the shelf' kit but of a design and layout specific to site and plot restraints). The Chief Executive acknowledged that, although Mr C held initial consultations with an architect, these only served to reinforce the Plot's constraints. However, he said it was perhaps regrettable that Mr C did not continue to seek advice because it was the same architect who ultimately provided a solution to the challenges of the Plot.

19. With regard to the design of house which was accepted, the Chief Executive confirmed that it did not meet the stipulated criteria (see paragraph 13) but that it achieved a satisfactory layout which respected the privacy of the lower lying adjacent property (which was the underlying reason for the distance guidelines). The Chief Executive was clear that, in his view, Mr C would have been given pre-application advice without prejudice and that he would have been told of his option to submit an application for consideration. He confirmed that a planning officer could only offer guidance and advice based on the facts available at the time.

20. On the matter of Mr C's objections, the Chief Executive said it had been assumed that after an acknowledgement had been sent, a standard letter would have been generated by the Council's computer system to advise him of the decision. However, this had not happened and an apology had been given to Mr C. He said that it was his view that a check should have been made to ensure that the correct notification letter had been sent and, because of this,

failure procedures had since been amended. Nevertheless, in his opinion, Mr C had not been disadvantaged by the Council's failure as the objections he had made to the application had already been considered prior to the decision. He said that there had been nothing in Mr C's letter to indicate that the application should have been considered further.

(a) Conclusion

21. I recognise Mr C's abject disappointment at not being able to bring his plans for the Plot to fruition. He believed that the Council reneged on the advice given to him in October 2004 and then failed to provide him an explanation. I have looked very carefully at the circumstances of this case but I do not agree. It is not possible now to determine the exact content of the meeting in October 2004, there are no independent witnesses. However, I am satisfied that the Planning Officer gave Mr C the advice which was available to her at the time. This was clearly during the early stages of the development of the 82 plots concerned and I do not feel she can be criticised. In connection with this, I agree with the Director and the Chief Executive (see paragraphs 15 and 17) that it is only for planning officers to give general advice. It is not their role to offer specific site solutions; this is more properly for the applicant to achieve with the aid of professional advisers. While I note that Mr C had initial discussions with an architect, they do not appear to have been in any depth and Mr C never submitted a formal application for consideration. While I appreciate that this would have involved him in expense, it would have allowed direct and specific discussion between his architect and Council officers and possible exploration of design ideas. Furthermore, I note that it was this same architect who eventually found a solution to the Plot's limitations, albeit nearly two years later.

22. I am satisfied that Council officers endeavoured to explain the reasons why it was considered appropriate for them to grant planning permission for the Plot in 2006 and, notwithstanding that in part the application failed to match exactly the conditions imposed on the 82 development sites (see paragraph 15), in the particular case of the Plot, site restrictions were generally met. None of the neighbours who were directly affected by the development of the Plot had felt if necessary to raise their own concerns and object to the application.

23. In all the circumstances, although I recognise Mr C's strong feelings in this matter, I have concluded that the Council acted reasonably. I do not consider

that there was maladministration and I do not uphold this aspect of the complaint.

(b) Conclusion

24. The Council confirmed to Mr C that his objections to the site were not picked up (see paragraph 15) and the Chief Executive explained this further (see paragraph 20). I have then to conclude that this was an administrative fault which amounted to maladministration. However, I am pleased to see that, in advance of a complaint to this office, the Council put procedures in place to avoid a similar recurrence and apologised to Mr C for this. Nevertheless, given the level and direction of correspondence which took place after Mr C made his objections to the planning application on 3 April 2006 (see paragraphs 10 to 14), I am very surprised that the Council did not once make reference to the fact that the application which was the subject of this correspondence had been determined on 6 April 2006. In particular, on 8 and 9 May 2006 it would have been more appropriate for the Planning Officer to tell Mr C that the application had been determined. Later, her letter of 29 June 2006 with its incorrect heading, only served to bolster Mr C's belief that the application was still to be decided and that his objections had weight. In the circumstances of this case, I am of the view that the failure to tell Mr C of the fact that planning permission had been granted in April 2006 was maladministration. Mr C was put to inconvenience in continuing his correspondence on the matter and only received clarity after visiting the Planning Department. I, therefore, uphold the complaint.

(b) Recommendation

25. The Ombudsman recommends that the Council emphasise to staff that care should be taken in responding to correspondence and that replies given to members of the public address the concerns raised. She also recommends that the Council apologise to Mr C for failing to advise him from the outset that planning permission had been granted.

(c) The Council delayed in responding to Mr C's correspondence

26. Mr C complained generally of the delay on the part of the Council in responding to his correspondence and this would appear to have been borne out by the number of apologies he received (see paragraphs 10 to 13). Nevertheless, apologies were given prior to Mr C making his complaint to this office.

(c) Conclusion

27. Accordingly, I do not uphold the complaint and I have addressed the Council's failure to respond to the terms of correspondence above

(c) Recommendation

28. Notwithstanding the finding on this complaint, the Ombudsman recommends that the Council emphasise to staff the importance of making timely replies to members of the public.

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

Explanation of abbreviations used

Mr C	The complainant
The Council	The Highland Council
The Plot	The plot of ground for which Mr C paid a deposit
The Planning Officer	The Council's Planning Officer
The Design Brief	The Design Brief prepared by the developer
The Area Manager	The Planning and Building Standards Area Manager
The Director	The Director of Planning and Development