

Scottish Parliament Region: South of Scotland

Case 200502480: Scottish Borders Council

Introduction

1. The Ombudsman received a complaint from a man (referred to in this report as Mr C) against Scottish Borders Council (the Council). The complaint concerned the Council's handling of a planning application for a new housing development in the village where Mr C lived. The complaint also concerned the Council's handling of the Local Plan for the village. The complaint was not upheld.

The Complaint

2. Mr C made a formal complaint to the Council on 7 November 2005. They replied to this formally on 25 November 2005, contending that they had complied fully with the requirements of the statutory planning procedure and that the new development was approved after full cognisance of the objections received against the proposal. Mr C subsequently made a referral for an external review by the Ombudsman, alleging that there was administrative fault or service failure by the Council in their handling of the planning situation in the village, as a consequence of which he was caused injustice through a reduction in the amenity of his home.

3. Specifically Mr C raised issues relating to the alleged failure to:

- ensure that he was notified properly about the prospect of a new housing development adjacent to his home;
- take proper account of his objections to the proposed development;
- reply fully and timeously to his representations about the handling of the Local Plan for the village and the new development.

Investigation and Findings of Fact

4. My investigation included examination of documentary evidence supplied by Mr C. A written enquiry was made of the Council, who provided relevant

background information which included:

- the relevant correspondence with Mr C;
- the planning report submitted to the Council's Development and Building Control Committee on 7 November 2005;
- the representations made by objectors including Mr C;
- the minutes of the Development and Building Control Committee meeting on 7 November.

5. On 12 July 2005 Mr and Mrs C wrote to the Planning and Economic Development Department in the following terms:

'We have been informed today by the agent acting for the landlord of the field and adjoining property known as [site 1] and (site 2) in the above village that it is the intention of your Council to include the land in the new Local Plan which inevitably will lead to development along the lines of the application already lodged with you for approval.

As tenant of this field and part of the adjoining buildings as well as being a tenant of the adjoining dwellinghouse we write to you to ask for clarification as to why this land is to be included in the Local Development Plan considering the recent consultations and concern from local villagers as to the village development.

At this stage we also would seek advice from you as to any means of pursuing objections to having this included in the Local Plan.

We remain strongly against the scale of development proposals for the village and would welcome a sympathetic reply.'

6. Mr and Mrs C wrote again, six days later, on 18 July to the Plans and Policy team:

'I would have thought that when a Local Plan is in second consultation stage that tenants of property and land to be included should, either by law or at least out of courtesy, be informed that the land and property which they rent is to be considered for building plots.

I have written to [Officer 1] regarding this matter but as yet have had no response and would be grateful to receive your explanation by return as I hear that the consultation period is to be limited to a six week period, so as not to delay the Finalised Plan, which constitutes the destruction of a peaceful village on the extremities of the Scottish Borders.'

7. In response to this the Plans and Policy Team wrote to Mr and Mrs C on 19 July in the following terms:

'... The second stage consultation period for the Draft Plan runs from 2 July to 12 August 2005. Due to the volume of work required to produce the Finalised Plan we will not be able to send you an individual response to your query.

The current site notes we hold are available on request. However I would suggest that you might wish to wait until all the comments have been considered and the reasons for the final site allocations recorded. This will be available by the time of the publication of the Finalised Plan in October.

The Local Plan review is a public process so your correspondence will be placed on a file that is open to public examination. If you would prefer your correspondence not to be made available in this way I should be grateful if you could let me know within 7 days of receipt of this letter ...'

8. On 27 July, Mr and Mrs C made further representations to the Department expressing concern about the lack of an 'individual response' and the impact of the

Local Plan.

'... we personally, due to location and tenancy agreements, are the most affected household in the village, proposals of the local plan being for development on all four sides of our dwellinghouse.

I feel that this is a major issue as far as we are concerned although it may not be for your department as development is only a coloured area on a map, not actual housing on your doorstep ...'

9. The Plans and Policy Team acknowledged this letter the following day, 28 July, and confirmed that their position had been explained earlier. However they indicated that it was open to Mr and Mrs C to discuss the Local Plan proposals over the telephone with the team.

10. Mr C subsequently telephoned the Planning Office and asked to speak with Officer 1; he indicated that this did not happen, and thereafter he wrote again to the Council:

'... Having called your office and asked personally to speak to [Officer 1] I was initially told that he was unavailable then, on further discussion, given the impression that he would not be able to help me as he is not fully aware of the extent of the Local Plan ...'

11. The Plans and Policy Team replied in the following terms:

'...Your individual comments on the proposed second stage changes to the Draft Plan will be recorded, analysed and taken into account during the production of the Finalised Plan, planned for October this year. Due to the volume of work required to produce the Finalised Plan we will not be able to send you an individual response to your comments. However when the Finalised Plan is published we will send you a CD-Rom copy of the Plan and the Publicity and Consultation Statement. I would advise that any comments you may have made on the Draft Local Plan at an

earlier stage will also be taken into account in finalising the Plan ...'

12. There was no further exchange between the complainant and the Council until 19 October 2005 when Mr C wrote to the Council indicating that he had been notified as a neighbour of an (amended) application for planning permission to erect new houses on two sites within the village. He raised queries about the period of notification and the timescale for submitted representations. He also noted that the number of proposed houses exceeded that included in the Local Plan consultation procedure.

13. Subsequently the developer made representations to Officer 1 (31 October) on the question of neighbour notification, confirming that they had notified properly all the neighbouring households in the village about the proposal. They contended (among other things) that;

'... We are concerned that the local community are using allegations of non-notification as a tactic to delay the determination of our application.

...[The village] is a small village where householders regularly communicate with each other and we understand that the Community Council met on Wednesday 26 October 2005 to discuss the development proposals which they have received from the Planning Department. It is quite clear that the village in general is aware that plans have been resubmitted to address concerns raised by local residents during the initial consultation period. Our proposals are retained on a public file by the Planning Department and are available for the benefit of the public to view and scrutinise ...'

They requested the Council to determine the application on 7 November 2005, as scheduled by the Planning Committee.

14. On that date Mr C - who attended the Planning Committee meeting – wrote to Officer 1 in the following terms:

'Having attended, in the public gallery, the Planning Committee meeting today where the neighbour notification was raised by [Councillor X] and promptly dismissed by [Officer 2]. I was appalled by the decision of the Committee to approve the plans for [the village] development considering numerous requests to delay the decision until the Community Council and indeed other residents who have not been notified had an opportunity to view and consider the proposals.

It became apparent to me that the New Local Plan has been adopted, again without consideration and notification, the Committee under serious recommendation from [Officer 2] took the decision to approve the development. I do hope that all members of the Committee were completely aware of the large number of objections raised by locals and the Community Council ...'

15. Officer 2 wrote to Mr C on 9 and 11 November confirming that the Development and Building Control Committee, following consideration of all observations received and all representations submitted (including those made by Mr C), had agreed to approve the application in principle subject to certain conditions relating to the amenity of the area; He listed the conditions and the reasons for their inclusion. I have not included the conditions and reasons in this report, but I am satisfied the Council sent them to Mr C.

16. On 25 November Officer 3 replied formally to the points raised by Mr C in his query of 7 November. In this he referred specifically to Mr C's earlier representations on the notification procedure:

'... I appreciate your concern over the 14 day period, but this period did elapse between the date you received the re-neighbour notification and the date of the Committee meeting.

... I can confirm that the Final Draft was approved in October by the Council, and will by the end of the year be published and placed on deposit to allow final representations from the public. A Public Local Inquiry is likely to follow before a Final Plan is

adopted.

... Your letter expressed in detail your concern regarding the application submitted. The letter was contained in the copy correspondence received by members of the Development and Building Control Committee which accompanied the report on the application by [Officer 2] for the November meeting. The Committee members are sent reports and accompanying correspondence several days before the meeting to enable them to fully consider all letters and submissions received.

Amended drawings for [the sites] were received from [the developer] on 27 September and I enclose a copy of their letter in which they state that they have carried out re-neighbour notification. On 14 October you telephoned me to report that you had not received a service copy in relation to the revised plans for [the sites]. I advised [the developer] that this was the case and he could not account for the fact that you had not received a notice. I enclose a copy of his letter of 31 October with a copy of a list of neighbours he claims were served. A set of revised plans were sent to the Community Council on 29 September. I would point out that the onus is on the applicant or agent to carry out the neighbour notification procedure correctly, and the Planning Department are obliged to accept a written assurance from them that the procedure has been complied with. The Planning Department is not required to contact neighbours to determine whether or not they have received a neighbour notice, but if it comes to their attention that this is the case, they would, as in this instance, advise the applicant.

I can assure you that all letters of representation were copied and included in the papers received by Committee members, as well as copies of replies received from consultees. The weight of local concern was referred to in the Committee report and by Officer 2 in his presentation.

The Scottish Borders Local Plan was approved by the Council as a final draft document and both [sites] are included as sites for residential development. The sites are also allocated housing sites in the Roxburgh Local Plan adopted in 1995 which is still the document in force until the new Local Plan has been formally adopted. Approval of the application in principle therefore complies with the current Local Plan Policy and this position was recognised by the Committee.

I appreciate that you are disappointed by the Council's decision to approve the application, but I believe that the decision was taken by Councillors in full knowledge of local issues and concerns. I enclose for your information a copy of the consent notice containing the planning conditions.'

18. The Plans and Policy Team subsequently wrote to Mr and Mrs C on 29 November 2005 indicating that the Finalised Local Plan was currently with the printers with an anticipated publication date of 13 December 2005. The publication would be advertised in the Edinburgh Gazette and the local press in advance. This would start the formal deposit period for the Plan which would run from 13 December 2005 to 31 January 2006. They informed Mr and Mrs C that the Plan could be viewed at the Area Offices, local contact centres, and public libraries. It was also placed on the Council's web site.

'... Following the period for objection (13/2/05 – 31/1/06) the Council will consider a report on the objections and identify those that can be resolved and those that will require to be considered by an independent reporter at a Public Local Inquiry. It should be noted that where the Council is minded to amend the Plan to meet the terms of an objection this, in turn, will be subject to further public consultation. The Public Local Inquiry is currently programmed for May/June 2006 ...'

19. Thereafter Mr C made a formal complaint of maladministration to the Ombudsman's office on 9 December 2005. Since it was apparent at that point that Mr C had not exhausted the Council's own internal complaints procedure,

consideration of the case was deferred until the outcome of Mr C's representations to the Council were known.

20. The Council replied formally to the complaint made by Mr C on 16 December 2005. In his reply Officer 1 confirmed that he had reviewed the correspondence and notes and had discussed the planning application with Officer 2. He explained that:

'... in line with legislation requirements, the applicant stated that the Neighbour Notification procedure was carried out on two occasions. On receiving an allegation that revised notification had not been carried out, the Department made a specific approach to the applicants and received written confirmation from them that they had carried out the necessary procedures. The Council is not empowered to require applicants to take any further action and could not reasonably have delayed determining this application having received this written assurance. All comments and objection letters received were taken into account when making the recommendation on the application.

Scottish Borders Council has a duty to consider all planning applications on the basis of the adopted Local Plan, in this case the 1995 Roxburgh Local Plan. The Consultation Draft Local Plan and Second Stage Document, whilst constituting a material consideration, do not have the same status as the adopted plan. Within the 1995 Roxburgh Local Plan, [the sites] were allocated for housing. The application for development of those sites was determined as meeting the required policies and allocation criteria and was approved on this basis by councillors on 7 November 2005.

You also referred to letters you submitted to the Plans and Research Team as part of the consultation period for the Draft Local Plan.

An unprecedented number of letters were received as a result of

the consultation periods (May until October 2005 and 4 July until 12 August 2005) and this added considerably to the volume of work to be undertaken. All the letters the Plans and Research Team received during these consultation periods were logged on a computer system and given a unique reference number. As part of this process a standard acknowledgement letter was then produced and sent out. All the letters were considered and views taken into account, however as stated in the letter sent to you dated 19 July 2005, we were unable to respond to each letter individually.

With regard to a point raised in your letter of 18 July, we informed as many people as possible about both the Consultative Draft Local Plan and the Second Stage Consultation – by placing adverts in local papers, on the local radio, placing posters in libraries and copies of the document in Area Offices and contact centres. We also wrote to each person who had contacted us during the Consultative Draft phase by standard letter notifying them of the Second Stage document.

... I appreciate the importance of this matter to you and acknowledge your disappointment at the decisions taken. However I can assure you that all your concerns and those of other members of the public were fully considered before any decisions were taken, and a number of amendments were introduced to try and achieve a more acceptable solution.'

21. This was followed up by a letter dated 19 December from the Council's Chief Executive who informed Mr C that;

'... You allege that [Officer 1] refused to speak with you as a member of the public. [Officer 1] has advised that he made no such comment and is sorry if that is the impression you were given. He does not deal with planning applications or detailed Local Plan matters. [Officer 2] is the Chief Planning Officer for Scottish Borders Council and is responsible for the Town and Country

Planning Service. [Officer 2] or a member of his staff would have been happy to meet with you had you requested such a meeting.

I understand that [Officer 2] has now written to you separately regarding the procedures that were followed in preparing the Local Plan and determining the recent planning applications. I hope his response provides clarification of the matter.

Having looked into this matter I consider that the Council has acted appropriately. If I can provide any further information please let me know.'

Conclusions

22. I realise that Mr C objects strongly to the new development, and the fact that he has pursued his objections vigorously over a long period of time with the Council and our office demonstrates his strength of feeling on the matter.

23. I am satisfied that each of the phases of the Local Plan was widely publicised and that all representations received, including Mr C's, were acknowledged and considered by the Council in determining how to proceed to the next stage.

24. I am also satisfied that neighbour notification was carried out by the developers when they submitted the planning application in question. The application was subsequently amended and the Council asked the developers to serve revised notices on the relevant parties; the developers confirmed in writing that they had served the requisite notices. With regard to the allegation that the notification procedure was inadequate, I am satisfied that the Planning Department took this up with the developers, who had confirmed their position. The members of the Development and Building Control Committee were alerted to the alleged inadequacy and the developer's response on this. The members determined that there were no grounds to delay their decision-making on the proposal. They decided to approve the application subject to conditions and this was minuted properly. The Council acknowledged that the new development would have an impact on Mr C's property, however, they contended that his interest (and that of the local community) had been fully and properly considered by both officers and

members in the preparation of the new plan and the determination of the planning application.

25. I do not consider there was any failure on the part of the planning authority to ensure that there was compliance with the public notification procedure for the new housing development; nor was there any failure on their part to take proper account of the representations made by Mr C (and other residents in the village) against the proposal.

26. Similarly, I do not consider there is any evidence of any failure on the Council's part in dealing with Mr C's representations about the procedural arrangements for the Local Plan, which were handled in compliance with the statutory regulations.

27. I am satisfied that the application in question was processed properly and all relevant planning factors were taken into account by the Council before they made the award of planning permission. This was something on which they were entitled to exercise their discretion as they saw fit and, as such, and in the absence of maladministration or service failure in making that decision, was not open to question by me. In these circumstances I do not uphold the complaint of maladministration.

27 June 2006

Explanation of abbreviations used

Mr C	The complainant
The Council	Scottish Borders Council
Councillor X	The local member for the complainant's area
Officer 1	A senior officer of the Planning Department
Officer 2	A senior officer of the Planning Department
Officer 3	An officer of the Planning Department