

Scottish Parliament Region: West of Scotland

Case 200501952: Loch Lomond and The Trossachs National Park Authority

Introduction

1. On 24 October 2005 the Ombudsman received a complaint from a man (Mr C) that the Loch Lomond and The Trossachs National Park Authority (the Authority) was not making information on planning applications readily available to the public.

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

- (a) the inconvenience caused to the public by making planning applications only available at Authority Headquarters in Balloch;
- (b) the Authority not fulfilling its undertaking to make available planning applications at the shared Scottish Natural Heritage/Park Authority office at Ballochyle which Mr C said has caused him unnecessary inconvenience; and
- (c) the Authority's delay in responding to Mr C's complaint as put by his Member of the United Kingdom Parliament (MP).

3. Following the investigation of all aspects of this complaint I came to the following conclusions:

- (a) not upheld, see paragraphs 14 and 15;
- (b) not upheld, see paragraph 16; and
- (c) not upheld, see paragraph 17.

Background

4. The Authority became fully operational on 19 July 2002. The Authority has a range of functions and powers to undertake the management of the National Park area. These include the power to enter into management agreements, make byelaws, employ rangers, and provide grants and other assistance. The Authority

is also the planning authority for Local Planning and Development Control within the National Park Area, taking over this responsibility from four local authorities at its formation (the four local authorities being Argyll and Bute, Perth and Kinross, Stirling and West Dunbartonshire). The Authority is responsible for preparing the local plan for the area and also determines planning applications within the National Park area. Local authorities continue to prepare Structure Plans with the Authority being a consultee in the preparation.

Investigation and findings of fact

5. The investigation of this complaint involved obtaining and reading all the relevant documentation supplied by Mr C and the Authority. I have set out my findings of fact and conclusion. I have not included in this report every detail investigated, but I am satisfied that no matter of significance has been overlooked. Mr C and the Authority have been given an opportunity to comment on a draft of this report.

6. Mr C's MP first brought Mr C's complaint to the attention of the Authority in a letter dated 21 February 2005, in which he said that a constituent had contacted his office and told him that planning application drawings were only displayed in Balloch. The MP asked if the Authority would arrange for planning application drawings to be displayed in local post offices.

7. The MP was sent an acknowledgement on 24 February 2005, but did not receive a substantive reply, and, therefore, he sent a reminder letter to the Authority on 20 May 2005. A substantive reply was still not received by 10 June 2005 at which point the MP's office sent a fax reminder to the Authority.

8. The Authority's Chief Executive sent a substantive reply to the MP on 15 July 2005. This letter gave a response on how the Authority had sought to enable the public to gain access to planning applications, and the need for a unified approach across the Authority area following on from the different approaches used by the four Councils previously involved in planning matters.

9. The MP passed the letter to Mr C who had detailed comments on matters in the Authority's response, including the availability of the Authority's weekly planning schedule and the Authority's use of Community Councils for comment on

planning applications of wider public interest. The MP raised these detailed matters with the Authority in a letter of 8 August 2005.

10. The Authority's Chief Executive sent a substantive reply, dealing with each point raised, to the MP on 30 August 2005. Mr C was not satisfied with this response and complained to the Ombudsman.

11. I sought clarification of the complaint from Mr C and once I received this I made detailed enquiries of the Authority on 22 December 2005. The Authority sent a comprehensive response on 17 January 2005. That information made clear that the Authority was fulfilling its obligations under the Town and Country Planning (Scotland) Act 1997 regarding publicity for and consultations in connection with determination of applications (in particular Sections 34, 36 and 38 of the Act). It is also clear that the Authority's practice follows the guidelines contained in the Scottish Executive Development Department's Planning Advice Note 40 on Development Control. Information on how the Authority does this is set out below in paragraphs 12, 14, 15 and 16.

12. The Authority demonstrated to my satisfaction that it had considered and implemented a number of mechanisms for making planning applications publicly available, including providing contact details for Planning Officers in the weekly planning schedule. The weekly planning schedule itself is available from the Authority on request, as well as being routinely sent by email and in hard copy, as appropriate, to over 100 individuals and interest groups, including Community Councils and amenity organisations. However, the Authority confirmed that it does not have a formal policy on making planning application materials publicly available.

Conclusions

13. I now deal with the three heads of complaint identified at paragraph 2.

(a) The inconvenience caused to the public by making planning applications only available at Authority Headquarters in Balloch

14. A key aspect of Mr C's complaint was the use of post offices to gain access to planning applications, as post offices had apparently been used when planning matters in Mr C's area were the responsibility of Argyll and Bute Council. The

Authority had considered using post offices when it was established. As planning applications had previously only been available from post offices in the Argyll and Bute area, and not the National Park area as a whole, it was deemed by the Authority not appropriate to use post offices for this purpose due to considerations of security and consistency of practice across the National Park area. Although I recognise that Mr C is unhappy about this decision, I am satisfied that it was a decision the Authority had the discretion to take after considering relevant issues including security and consistency of practice. However, I note the Authority are currently in the process of arranging a trial period for viewing applications at sub-post offices in Arrochar (of which Mr C is aware) and Strone in which there is expressed or expected public interest. In addition to this, public libraries at Drymen, Killin and Callander are used to deposit planning applications on request. As the Cowal area is served by mobile libraries, the Authority have made arrangements to make planning applications available at the shared Scottish Natural Heritage/ Authority office at Ballochyle. National Park Headquarters in Balloch and National Park sub-offices at Aberfoyle and Lochearnhead are also used.

15. The Authority currently ask Community Councils to comment on planning applications of wider public interest. In his complaint Mr C has described Community Councils as 'elusive bodies' and says that local authorities do not use them in the planning process. However, the Scottish Executive Development Department's Planning Advice Notice 47 (on Community Councils and Planning) states that, under the Local Government etc (Scotland) Act 1994, Community Councils have a statutory right to be consulted on applications for planning permission. I have established that there is Community Council representation in Mr C's area. The fact that Mr C chooses not to agree with the concept of Community Councils or to use them is not, in itself, a complaint of maladministration or evidence that the Authority is not engaging the local community in planning matters. If a third party is seeking information from an authority, and that authority has taken reasonable steps to make that information available, there is an onus on the third party to be active in acquiring it. In all the circumstances, I do not uphold this aspect of the complaint. Never the less, the availability of such information should, of course, be reviewed periodically by authorities to ensure that the best service possible is being provided.

(b) The Authority not fulfilling its undertaking to make available planning applications at the shared Scottish Natural Heritage/Park Authority office at Ballochyle which Mr C said has caused him unnecessary inconvenience

16. Mr C complained that the Authority did not make planning applications available for viewing at the shared Scottish Natural Heritage/Authority office at Ballochyle. I have found no evidence to support this complaint, or that the Authority is in any way restricting access to planning applications. The Authority state that

'planning applications are made available by request only at which time arrangements are made to send papers to the most appropriate office. While this is normally that located closest to the application site, there are occasions when it is more convenient to the person enquiring for these papers to be directed elsewhere.'

The Authority goes on to state that it:

'does not provide duplicate files in satellite locations...parties interested in planning applications are encouraged to make contact directly with the case officers involved if they are seeking up-to-date information and an interpretation of the issues surrounding a planning application...this cannot be secured from paperwork alone...In addition, Planning Officers are able to explain that certain matters are not relevant planning considerations, even though they may be of considerable importance to third parties.'

The Authority conclude that

'such discussions, whether over the phone or directly with the necessary drawings in view, help to avoid ambiguities, enhance clarity and are seen as an important part of conducting the planning process in a way that involves the public.'

I have found no evidence to disprove the statements made by the Authority and therefore do not uphold this aspect of the complaint.

(c) The Authority's delay in responding to Mr C's complaint as put by his Member of the United Kingdom Parliament

17. In terms of the delay in responding to Mr C's MP, the Authority's Chief Executive, in his first substantive reply, offered his personal apologies for the delay. In addition, the Authority's Chief Executive offered apologies for this delay in writing to me during my investigation. While the delay was unfortunate, I am satisfied that the apologies already offered to Mr C's MP directly and through my investigation adequately remedy any injustice caused to Mr C. In the circumstances, I do not uphold this aspect of Mr C's complaint.

18. In correspondence with me, Mr C stated that the whole subject of his complaint hinged on the need for open public administration. In the course of investigating this complaint I have found no evidence that the Authority is deliberately not being open in how it makes planning applications available to the public. The Authority answered the questions asked by Mr C's MP, and the additional clarification provided by the Authority as part of my investigation has been helpful.

General recommendations

19. Although I have not upheld Mr C's complaints, I have some recommendations for the Authority arising from my investigation:

- (a) that the Authority consider distributing hard copies of its weekly planning schedule to libraries (including mobile libraries) and post offices across the National Park area;
- (b) that the Authority consider including information on how to obtain copies of planning applications, and a telephone number for information and advice, in newspaper notices for planning applications and planning orders. This is in addition to the information already included that plans can be inspected at National Park headquarters;
- (c) that the Authority consider a mechanism for recording the number of requests made for planning applications to be viewed at National Park headquarters and at the various satellite locations in order to monitor the use of this service by the public, with a view to using this collected data in any review of the operation and targeting of this service; and

- (d) that the Authority draft a clear and brief statement of how and where it makes planning applications available to the public. This statement should be sent to stakeholders and put on the National Park website, with hard copies being sent to public libraries, post offices and other relevant locations as a notice or leaflet.

20. The Authority have accepted recommendations a, b and d. Recommendation c is accepted for the Authority's own premises. Where premises of partner organisations are used, such as libraries and post offices, the Authority has undertaken to use its best endeavours and ask that a record be kept by staff there. I would like to acknowledge the Authority's co-operation during the course of my investigation and their willingness to learn lessons from this complaint. The Ombudsman asks the Authority to notify her when and how the recommendations are implemented.

27 June 2006

Explanation of abbreviations used

Mr C	The complainant
Mr C's MP	The complainant's Member of the United Kingdom Parliament for the Argyll and Bute constituency
The Authority	Loch Lomond and The Trossachs National Park Authority

Glossary of terms

Weekly planning schedule The weekly planning schedule issued by the Authority contains details of all planning applications which have been submitted, validated, registered and determined each week by the Authority. It also contains additional information on planning appeals, enforcement and forestry matters.

Community Councils Community councils form the most local tier of statutory representation in Scotland. They were created by the Local Government (Scotland) Act 1973 and are intended to bridge the gap between local authorities and local communities and to help to make local authorities and other public bodies aware of the opinions, needs and preferences of the communities that they represent. While it is true that, because community councils only exist where volunteers are prepared to represent their community in this way, some areas are not currently covered by a community council, there are currently around 1200 community councils in Scotland. Information on and contact details for Community Councils are available from local authorities.