

Scottish Parliament Region: Highland and Islands

Case 200402100: The Highland Council

Summary of Investigation

Category

Local Government: Planning; Handling of application

Overview

The complainant raised concerns about the advice she had been given about the listing status of her property and about the work carried out on her property.

Specific complaints and conclusion

The complaints which have been investigated are that:

- (a) Ms C was given erroneous advice relating to the listing status of Property 1 and the need for listed building consent when she telephoned the Planning Office in October 2003 (*partially upheld*);
- (b) Ms C was informed that consent would not be granted if she submitted an application to retain UPVC windows (*not upheld*);
- (c) the Council have acted inconsistently in granting an application in Wick to retain UPVC windows (*not upheld*);
- (d) there was considerable delay in installing the replacement windows and in carrying out remedial work after their replacement (*partially upheld*); and
- (e) the provision of inconsistent information on the contractual position with Contractor 1 (*no finding*).

Redress and recommendation

The Ombudsman recommends that the Council:

- (i) meet the legal costs incurred in relation to the abortive sale of Property 1 and the abortive purchase of property 2; and
- (ii) apologise to Ms C for the delay caused due to their communication failure.

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

Main Investigation Report

Introduction

1. On 25 February 2005 the Ombudsman received a complaint from a woman (referred to in this report as Ms C) that she was given erroneous advice by the Highland Council about the need for listed building consent to install UPVC windows in her property (Property 1). She subsequently discovered that Property 1 was listed and was informed that it was unlikely she would receive retrospective listed building consent for the windows. The Council agreed to pay for the windows to be changed.

2. Ms C further complained about the fact that the Highland Council had allowed somebody in very similar circumstances to keep UPVC windows which had been installed without knowledge of the building's listing status.

3. When Ms C first brought her complaint to the Ombudsman, the windows had not yet been changed. After the work had been carried out, Ms C complained about the quality of the work performed and the misleading information which the Council had given her regarding the nature of the contract with the contractor (Contractor 1). She also complained of the delays involved in carrying out the work. Ms C informed me that these events caused her a great deal of stress and inconvenience.

4. The complaints from Ms C which I have investigated are that:

- (a) Ms C was given erroneous advice relating to the listing status of Property 1 and the need for listed building consent when she telephoned the Planning Office in October 2003;
- (b) Ms C was informed that consent would not be granted if she submitted an application to retain UPVC windows;
- (c) the Council have acted inconsistently in granting an application in Wick to retain UPVC windows;
- (d) there was considerable delay in installing the replacement windows and in carrying out remedial work after their replacement; and
- (e) the provision of inconsistent information on the contractual position with Contractor 1.

Investigation

5. The investigation was based on information provided by Ms C and by the Council, and on the correspondence between Ms C and the Council regarding the complaint. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Both Ms C and the Council have been given the opportunity to comment on a draft of this report.

6. In October 2003 Ms C made a telephone enquiry to the Planning Office and was informed that she would not require planning permission to install UPVC windows in Property 1 as it was not a listed building. Relying on this information, Ms C proceeded to install UPVC windows throughout her house.

7. In August 2004 Ms C decided to sell Property 1 and the issue of planning permission was raised by the purchaser as part of the conveyancing process. Ms C called the Planning Office again and discovered that Property 1 was a C-listed building. She was informed that, because of this, she would have to apply for retrospective listed building consent. She was also told that it was probable that consent would be refused.

8. The sale of Ms C's property fell through as a result of the window issue and Ms C incurred legal costs for the marketing and abortive sale of her flat. Ms C had also arranged to purchase a property (Property 2) but this was not possible as she had been relying on the proceeds from the sale of Property 1. Ms C also incurred lawyers' fees for the abortive purchase.

9. The Council agreed to pay for the replacement of all of the windows in Property 1 and specified that the contract for the work would be between Ms C and the contractors. It later emerged, however, that the contract was in fact between the Council and Contractor 1.

10. Work commenced on 21 March 2005 and was concluded on 9 December 2005. During this time numerous issues arose about the quality of the work and these resulted in a breakdown in communication between the parties involved.

11. Ms C discovered that a similar case had arisen in Wick and brought this to my attention. In that case someone had been allowed to keep UPVC windows in a

C-listed building. The person in question was given consent to do so because she had not been informed of the recent listing of her building.

(a) Ms C was given erroneous advice relating to the listing status of her property and the need for planning permission when she telephoned a Planning Office in October 2003

12. In October 2003 Ms C telephoned the Planning Office and spoke to Officer 1. She informed Officer 1 that she wished to install UPVC windows in Property 1 and asked whether she would require planning permission to do this. Officer 1 asked her for the address of the property and Ms C gave this. On this basis, Officer 1 told her that her property was not listed and so she would not need planning permission to install the new windows.

13. Ms C called the Planning Office again on 20 August 2004. She said she was selling the flat and asked for confirmation in writing of the position regarding listed building consent for the windows. She was asked to specify the exact location of Property 1. On this basis, she was told by Officer 1 that her property was in fact listed and that she would need to apply for retrospective listed building consent for the windows. As a result of the planning issues around the windows, the sale of Property 1 fell through.

14. Ms C had also agreed the onward purchase of Property 2. She was relying on the sale proceeds from Property 1 to achieve the agreed purchase price. As the sale of Property 1 did not go ahead, Ms C's purchase of Property 2 also fell through.

15. The confusion about the listing status of Property 1 arose due to the way a Council compiled ready reference system of the statutory list of listed buildings had been completed. Ms C's property was on a corner and was listed as the upper floor flat of a property at a different address.

(a) Conclusion

16. When Officer 1 gave the initial advice to Ms C in October 2003, she was aware that Ms C intended to carry out work on her property as a result of it. Moreover, she was able to determine the listing status of the building upon Ms C's second telephone call in August 2004 by making further enquiries to Ms C as to the

property's exact physical location. The same care should have been taken when giving the initial advice in October 2003. Before Ms C brought her complaint to us, the Council had already accepted that she had been given the wrong advice and had borne the expense of £16,000 to replace the UPVC windows. While I commend them for this action, I do not think it goes far enough. I, therefore, partially uphold the complaint. The Ombudsman recommends that to fully remedy the injustice that has been caused to Ms C, the Council should meet the legal costs incurred in relation to the aborted sale of Property 1 and the aborted purchase of Property 2.

17. The Council have informed me that they have stressed to staff that they must refer to the statutory list of listed buildings when answering enquiries from the public and preferably that such enquiries should be followed up in writing with a written response. The Council are discarding the Council compiled index system and are working on a project mapping all listed buildings on the Council website for use by the public and staff. I commend the Council for the action they have taken to remedy this situation.

(b) Ms C was informed that consent would not be granted if she submitted an application to retain UPVC windows

18. When Ms C telephoned the planning office on 20 August 2004 she was informed by Officer 1 that she would have to apply for retrospective listed building consent but that it was not likely that this would be granted. She wrote a letter of complaint to the Chief Executive on 24 August 2004.

19. On the 25 August 2004 Ms C received a reply from Officer 2, the Director of Planning, to her letter of complaint. This confirmed that she would have to apply for retrospective listed building consent and that no guarantee could be given as to the decision the Planning Committee would come to on her application. The letter states that 'it is permissible to take into account other material considerations' and that, in the view of Officer 2, 'the confusion that had arisen initially with respect to [Ms C's] property and the fact that she carried out works in good faith will be a material condition'.

20. There was subsequently a meeting between Ms C and certain Council Officers during which the Area Planning and Building Control Manager (Officer 3),

recalls that there was 'a discussion as to the merits of the ... windows' and it was indicated to Ms C that 'the option of retention of the UPVC windows would not have the officers' support'. Ms C recalls that she was told 'an application to retain UPVC windows would not be successful because her flat was in a C-listed building and faced the High Street and that the Committee would not look favourably on it'.

21. Ms C did not apply for retrospective listed building consent.

(b) Conclusion

22. Ms C was initially told that a retrospective listed building application would probably not be granted. The subsequent communication from Officer 2, however, did provide accurate information that the retrospective planning application could only be decided by the Area Planning Committee (the Committee) and that any material considerations would be taken into account. I consequently do not uphold this complaint.

23. It does, nevertheless, appear that the information given to Ms C was inconsistent and the Ombudsman suggests that steps should be taken by the Council to ensure that accurate information is given out. Ms C had no way of knowing that the information which she was given by Council officers was their personal view rather than the official policy of the Council. It should be made clear that any opinions given by officers are their views alone and that a final decision on whether or not to grant planning permission can only be made after submission of a formal planning application.

(c) That the Council have acted inconsistently in granting an application in Wick to retain UPVC windows

24. In May 2005 Ms C became aware of a situation in Wick where Ms A had been allowed to retain UPVC windows in a C-listed building as they had been installed following a delay by the Council in issuing the formal notice of listing to the owner.

25. Ms A submitted a retrospective planning application to the Committee. From the minutes of the Committee's meeting, it appears that they took a sympathetic stance in the circumstances due to the fact that the applicant had proceeded with the UPVC windows prior to being advised that the building was listed.

26. Section 25 of the Town & Country Planning (Scotland) Act 1997 requires determination in accordance with the development plan unless material considerations indicate otherwise. In the Council's reply to my enquiries they stated that:

'Officials consistently recommend refusal of plastic windows in listed buildings as contrary to conservation and listing aspirations. On occasions, however, members exercise their right to take other material considerations into account and grant permission'.

27. In the Wick case, the officer involved recommended approval of the application for listed building consent to install UPVC windows and doors.

(c) Conclusions

28. In the Wick case the owner did apply for retrospective permission for the UPVC windows and this was granted by the Committee. In Ms C's case, she did not apply for retrospective listed building consent but decided to proceed down the course of having all of the windows replaced at the Council's expense. Ms C's case was, therefore, never put to the Committee and no decision on retrospective listed planning consent was ever made. I am unable to determine what the result would have been had she applied for retrospective listed building consent. I consequently do not uphold this complaint.

29. The Ombudsman does, however, suggest that the Council should consider taking steps to ensure that officers give consistent advice to planning committees and report back to the Ombudsman on this matter.

(d) That there was considerable delay in installing the replacement windows and in carrying out remedial work after their replacement

30. The issue was first brought to the Council's attention on 24 August 2004. On 22 October 2004, the Council agreed that they would pay for the replacement of all of the UPVC windows. It took some time to process the listed building application to replace the unauthorised windows, obtain quotes from various contractors and also for Contractor 1 to manufacture the necessary windows. On 21 March 2005 Contractor 1 started the work; the timescale at this stage was subject to the contractor's workload.

31. Contractor 1 stated that they had completed the work on Ms C's flat on 22 April 2005; however, numerous faults were highlighted in a survey commissioned by Ms C on 25 April 2005. The report was received by the Council on 13 May 2005 and it was arranged that Contractor 1 would return to rectify the faults.

32. At this stage relations between Ms C and Contractor 1 had broken down to such an extent that Ms C would only communicate with them through the Council. She stated that Contractor 1 refused to communicate directly with her as their contract was with the Council. Contractor 1 also stated that they found relations with Ms C to be difficult.

33. Ms C wrote to the Council on several occasions and set out certain conditions which she wished should be met before she would allow Contractor 1 access to her property to complete the work. These concerns related to the standard of the work and also to details of the contract with Contractor 1. On 17 August 2005, Ms C agreed to allow Contractor 1 to have access to her flat. It was arranged that work would start on 5 September 2005.

34. There had been certain delays over the summer due to Contractor 1 and certain Council officers being on holiday.

35. Contractor 1 started work again on 5 September 2005. On 8 September 2005 they confirmed that all the work was completed apart from some aspects which would require a cherry picker. Officer 3 confirmed to Ms C that this work would be carried out on 12 September 2005. Contractor 1 did not attend on 12 September, as indicated, to finish the work.

36. On 13 September 2005 Ms C was informed by Officer 3 that Contractor 1 would hire a cherry picker on the 26 September 2005 in order to complete the work. Ms C agreed that this date was acceptable in an e-mail on 15 September 2005 but in an e-mail on 21 September 2005 the Council stated that Ms C had never confirmed the proposed date and that 26 September was no longer suitable as Contractor 1 had not had enough notice to hire the cherry picker in time. On 8 and 9 December 2005 the final work was done by Contractor 1.

(d) Conclusions

Delay in installing replacement windows

37. It took the Council 43 working days to agree to the replacement of all of the windows from the time Ms C's solicitors first asked for the letter of comfort from the Council on 24 August 2004. This timescale is reasonable as the Council required time to consider the situation and to liaise with Ms C and her solicitor. Additionally there were the questions of whether Ms C would apply for retrospective listed building consent for her windows and which windows were to be replaced. It took until 17 December 2004 to process the listed building application to replace the windows and to consider the quotations from contractors. This timescale is reasonable. The timescale from this point until the start of work on 21 March 2005 was set by Contractor 1 and any delays at this stage were due to their workload and schedule and also due to the fact that they required to manufacture the windows.

38. The time taken by the Council to arrange the installation of the replacement windows was reasonable. I consider that the subsequent delays have been explained satisfactorily. I, therefore, do not uphold this part of the complaint.

Delay in carrying out remedial work

39. There were some delays in carrying out remedial work over the summer but these were due to both Council officers and Contractor 1 being on holiday. Additional delays were caused due to the unfortunate breakdown in relations between Ms C and Contractor 1. There was confusion in the communication between the Council and Contractor 1 and between the Council and Ms C regarding the hiring of the cherry picker. This confusion caused a delay of 12 weeks to the remedial work.

40. Some of the delays were out of the Council's hands; however, the delay caused by the Council's breakdown in communication with Ms C and Contractor 1 over the cherry picker was extensive. This situation was caused in part by Ms C's refusal to communicate directly with Contractor 1 but should have been managed more carefully by the Council. I, therefore, partially uphold this part of the complaint.

41. I recommend that Council staff should be reminded of the importance of clear communication and understanding especially in cases where there is a degree of

strain on relationships. The Council should apologise to Ms C for the delay caused due to communication failure.

(e) The provision of inconsistent information on the contractual position with Contractor 1

42. Contractual matters are excluded from our jurisdiction. However, during the course of my investigation, the Council have confirmed that although Ms C was originally told the contract would be between her and the Contractor, it was subsequently determined, in the interests of best value and control over the expenditure of public money that the contract should be between the Council and the Contractor. The Council did not give this information to Ms C.

(e) Conclusions

43. I have not investigated the contractual aspects of this complaint. Nonetheless, the Council did give Ms C inconsistent information on the contractual position with Contractor 1 and failed to keep her informed when they changed the way they decided to administer the contract. It is important that members of the public are kept informed of material changes which affect them.

44. The Ombudsman suggests that the Council should apologise to Ms C for failing to keep her informed about the material issues to the nature of the contract for work on her property and that employees should be reminded of the importance of good communication with members of the public.

29 August 2006

Explanation of abbreviations used

Ms C	The complainant
Ms A	The person who was given retrospective planning permission to keep her UPVC windows in Wick
Officer 1	Council Planning Officer at Planning Office who gave advice over the telephone
Officer 2	The Director of Planning
Officer 3	The Area Planning and Building Control Manager
Property 1	Ms C's flat
Property 2	The flat which Ms C sought to purchase
Contractor 1	The contractor who undertook the work on Property 1
The Committee	The Area Planning Committee
The Council	The Highland Council