

Scottish Parliament Region: Highlands and Islands

Case 200501774: Shetland Islands Council

Summary of Investigation

Category

Local government: Planning, policy/administration

Overview

The complainants complained about what they considered was a lack of formal process for altering the geographic lines of planning zones in the area around their home.

Specific complaint and conclusion

The complaint which has been investigated is that Shetland Islands Council lacks a formal process for altering the geographic lines of planning zones in the area of the complainants' house (*not upheld*).

Redress and recommendation

The Ombudsman recommends that the Council consider more fully recording the subject of significant points of objection and/or details of any specific motions proposed and seconded at public meetings.

Main Investigation Report

Introduction

1. On 6 October 2005, the Ombudsman received a complaint from an MSP on behalf of two constituents (referred to in this report as Mr and Mrs C) about Shetland Island Council's (the Council) lack of formal process for altering the geographic lines of planning zones in the area of their house.

Investigation

2. Mr and Mrs C complained that there had been a lack of formal process over changes to the geographic lines of planning zones in the area of their house. They were concerned that changes had been made to planning zone maps without proper reason. They expressed concern about the consultation exercise carried out by the Council which they considered was inadequate, the role the Community Council in the area played and they sought assurances on what would happen in future consultations.

3. Mr and Mrs C complained, too, that the Council had no comprehensive written record of a public meeting held on 26 November 2001 which had discussed changes to the zone boundaries.

4. In the course of my investigation, I considered detailed information, correspondence and documents provided by Mr and Mrs C's MSP and Mr and Mrs C themselves. A number of written enquiries were also made of the Council and documents, correspondence and plans provided by them were studied. An explanatory note prepared by the Council explaining the zone system is at Annex 2.

5. I have not included in this report every detail investigated, but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C, their MSP and the Council were given an opportunity to comment on a draft of this report.

6. Although the complaint concerned something which happened in November 2001 (and arguably might have been excluded from examination by my office because of the time that had elapsed), it was clear from the documents

provided by Mr and Mrs C's MSP that Mr and Mrs C had been pursuing their complaint continually since November 2001, and prior to approaching this office.

7. In November 2001, a decision was taken at a public meeting – the designation of an area for housing was altered when the existing zone 1 area in the vicinity of Mr and Mrs C's home was extended.

8. The Council confirmed that the alteration to the zone boundaries was made by the local community, in other words, those who attended the public meeting on 26 November 2001. Revised zone boundaries were confirmed and subsequently ratified by the local Community Council before being presented to the full Shetland Islands Council for approval.

9. In response to Mr and Mrs C's complaints that the decision had been taken without proper process and consultation, the Council explained that the decision had been the subject of widespread consultation, open to all members of the public in the area, and that during plan preparation there had been many opportunities for public involvement. I asked the Council to demonstrate that, and to provide me with further details.

10. In their response to my enquiries, the Council confirmed that publicity for the meeting on 26 November 2001 had been by posters displayed locally, BBC radio announcements and newspaper advertisements in the Shetland Times on Friday 16 November 2001. This advert gave details of how the draft local plan could be viewed at community offices, the Shetland Library and other locations, including the Council's own website.

11. In addition, on 7, 21 and 28 June 2002, notices of preparation of the Shetland local plan appeared in the Shetland Times indicating where copies of the plan could be viewed and inviting objections to be submitted by 22 July 2002.

12. In the public notices column of the Shetland Times on 2 and 9 July 2004, notices of the adoption of the Shetland local plan were published, giving anyone who was aggrieved by the plan the opportunity to question its validity by applying within six weeks from 2 July 2004 to the Court of Session under Section 238 of the

Town and Country Planning (Scotland) Act 1997. The Council also told me that the adoption of the plan was reported on BBC Radio Shetland.

13. In a letter to our office dated 25 February 2006, Mr and Mrs C explained that they had not attended the meeting in November 2001 because of another commitment. They told me they were under the impression that the land zoning adjacent to their property had been resolved in the local plan set out in the 1990s. In that letter, Mr and Mrs C set out a good deal of useful background information to their complaint. Whilst helpful, the information related to planning decisions outwith the remit and timescale of the complaint currently being investigated by me and so I have not included details here.

14. With regard to the complaint currently under investigation, Mr and Mrs C explained that they did not take the opportunity to comment on the draft local plan and confirmed that they did not pursue their objections at that time.

15. Mr and Mrs C complained about the lack of formal note-taking at the public meeting which agreed changes to the zone boundary.

16. In response to my enquiries, the Council explained that it had been their practice not to take formal minutes of such meetings or to record who attends, although the Council stated that an informal record was kept by them as an aide-memoir. The Council confirmed that, although the meeting note was not published, any interested party could have asked to view it. Mr and Mrs C have personally been offered that opportunity (specifically in a letter to them from the Council dated 25 November 2004).

17. The Council told me that it considers that more formal process of record-keeping at public meetings would inhibit the free and open discussions they have with the public. In their view, in a small community like Shetland, people are concerned about being seen to be individually imposing their views on others or being held responsible for a particular course of action. The Council told me that they have had to particularly reassure people present at recent meetings that a formal record of proceedings would not be taken. Those attending have had concerns about possible consequences of something being said, later being attributed directly to them.

Conclusion

18. While I fully appreciate that Mr and Mrs C are unhappy about the decision to change the zone designation in the vicinity of their house, their dissatisfaction does not, in itself, constitute a complaint of maladministration or service failure. I am satisfied, having considered all information available to me, that that decision was taken in line with the Council's normal policies and procedures, and after Mr and Mrs C had been given a reasonable opportunity to raise their objections.

19. With regard to publicising the public meeting where the decision was taken, I am satisfied that the Council took all reasonable steps to notify the local community. I am satisfied too that the advert placed in the local newspaper gave adequate notice of the meeting, in view of the size of the community and the large circulation of the local paper – the Shetland Times achieves saturation coverage with a weekly circulation figure of 11,273 to a population of 21,988 in 9,111 households (information taken from the 2001 census).

20. I am also satisfied that appropriate publicity was given to the Shetland local plan.

21. Further, I am satisfied that the Council have offered Mr and Mrs C a number of opportunities for future consultation on the proposals and have given them a number of specific commitments and offers, including inviting them to attend the Council's offices to view the informal note taken of the meeting of 26 November 2001 and providing them with a range of documents which described the plan preparation process.

22. When the Shetland local plan was adopted by the Council at the end of March 2004, it contained a provision that the housing zoning system would be reviewed by May 2007. The Council have told Mr and Mrs C that, as part of this review, they will be given the opportunity to make their views known.

23. For the reasons above, I do not uphold Mr and Mrs C's complaint.

Recommendation

24. While I appreciate all the concerns the Council have raised with regard to formal minute and note-taking, I am suggesting to the Council that, for the purposes of ensuring that a proper audit trail of decision-making can be demonstrated, the Council consider more fully recording the subject of significant points of objection and/or details of any specific motions proposed and seconded at public meetings, without necessarily recording the name of objector, proposer, seconder etc.

25. I am pleased to report that the Council have agreed to adopt my suggestion and I am grateful to them.

31 October 2006

Explanation of abbreviations used

An MSP

The complainant

Mr and Mrs C

The complainant's constituents

The Council

Shetland Islands Council

Shetland Islands Council: Planning Service

Housing Zones Review

Explanatory Note

1. Introduction

1.1 This paper explains how we propose to proceed with the review of Housing Zones. It provides some background information about the planning system, the particular issues that arise in Shetland and the options that may be open to us.

2. Background

2.1 Two principal planning documents guide the development and use of land in Shetland, namely the Shetland Structure Plan and the Shetland Local Plan. Both of these are statutorily required. In a few years' time, if legislation introduced into the Scottish Parliament next year is passed, the two Plans will be merged into a single document — a move we have long advocated - but for the moment we must work within the present system.

2.2 The Structure Plan is concerned with broad policy that, in general, applies right across Shetland. The Local Plan fills in the detail. So the Structure Plan establishes the system of housing zones, but the zoning system is applied at local level through the Local Plan, which is where you will find the zone boundaries for each Community Council area. Of course, both plans deal with all the economic, environmental and social issues affecting development in Shetland, not just with housing.

2.3 The Structure Plan was approved by the Scottish Ministers in January 2001 and it is meant to be reviewed every five years. If we are to have a revised Structure Plan in place by January 2006, we need to get a review under way now. The Local Plan was adopted at the end of June 2004, but with the proviso that the housing zoning system would be reviewed within the lifetime of the present Shetland Islands Council, in other words by May 2007. In practice, the two reviews really need to take place side by side, because if the housing zones review results

in fundamental changes to the housing zoning system (as opposed to the moving of some boundaries) the Structure Plan will need to be amended to incorporate whatever new system is devised.

2.4 As will be clear from subsequent sections of this paper, some form of land use zoning system is essential. Such systems exist in all of the developed world, not just in Shetland or the rest of the UK, and for good reasons. In particular:

- The Town and Country Planning (Scotland) Act 1997 requires that the policies applying to the use and development of land must be shown on a map;
- We need to be able to offer applicants for planning permission and indeed objectors to development adequate guidance on where development is likely to be acceptable, otherwise applying for planning permission would become an expensive form of lottery;

The location of development can be influenced by the plans and policies of a range of other public agencies (like Scottish Water, Scottish Natural Heritage, the Civil Aviation Authority, the Scottish Environment Protection Agency) and the Local Plan needs to reflect a negotiated way forward having taken account of those other interests;

- There are other constraints, such as the existence of good agricultural land, land prone to flooding, or areas of archaeological interest.
- There are some areas that communities want to see kept free of development for landscape or scenic reasons and there may be areas that we would wish to safeguard for other uses, such as industry or mineral extraction;
- If we do not have clear policies we cannot operate a delegation scheme and, where there is no clear policy, it would become necessary to refer every application to the full Council.

2.5 That said, the system we have in Shetland is unique. In essence, all of the land in Shetland is categorised as falling into one of four zones. Basically, planning permission is easier to obtain the lower the zone number.

- Zone 1 — usually areas of established settlement with services in place. Typically the core of the existing community, the policy here is that housing development should be actively encouraged if basic general requirements are met.

- Zone 2 - settled countryside in the rural areas generally away from Lerwick. Here, development is favourably considered but the best agricultural land is protected.
- Zone 3 - settled countryside in the pressure areas close to Lerwick. In these areas, development will be favourably considered where it strengthens and reinforces existing building groups. The aim is to control sporadic housing and promote housing clusters to ensure that some green space remains undeveloped. This approach is also intended to limit the number of new individual accesses onto the road network.
- Zone 4 is open countryside with little or no existing development. In these areas, the aim is to limit development in order to control the demand for extensions to existing services and the number of new road accesses. These areas are often important open landscapes which are part of Shetland's heritage and identity. Government policy is not to permit development in such areas, but zone policy permits the building of a new house for agricultural or social support reasons where it forms a group with the existing buildings on the holding.

2.6 Needless to say, no zoning system is perfect. There will always be those who argue on the one hand that people should have the freedom to build anywhere they like and those on the other hand who want to see new development confined to the core of existing settlements with open countryside protected for agricultural and landscape reasons. Of course, very few people take up position at the extremes of the argument, but in Shetland, in the past, it has proved genuinely difficult to find a compromise that is acceptable and politically supported. Our zoning system was developed in order to respect Shetland's crofting tradition and it offers a large element of choice in housing location. It can be persuasively argued that this relatively generous supply of land has allowed land prices in Shetland to rise much less dramatically than in some other parts of the Highlands and Islands. Having said that, there are many other legitimate concerns which come into play when considering housing location, for example the effects of particular settlement patterns on public transport and the cost of providing public services. And it is inevitable that, in a few cases, these planning considerations will become entangled with the personalities and community politics involved.

2.7 On the positive side, it must be said that, on the whole, the zoning system

appears to have worked reasonably well. In general — and we would be the first to acknowledge the exceptions — it has been possible for applicants to obtain a good indication of where they can and cannot expect to obtain planning permission. For the most part — and again there are exceptions - communities and interested residents have been able to know where development will take place and have been able to influence the pattern of future development. We have been able to make delegated decisions in the majority of cases involving new housing, rather than refer every application to the Planning Sub Committee. Delegation to officers is only possible when there is a clear policy in place. This benefits applicants because they obtain a quicker decision.

2.8 There are nevertheless some difficulties. These may stem partly from the basic design of the zone system, although opinions on this do seem to vary considerably, and we are aware that the system has been seen in a positive light in some parts of Shetland while being criticised in others. However, we are in no doubt that there are some problems, in some if not all areas, with the boundaries of the zones that were established by the ‘Plan Ahead’ meetings and subsequently endorsed by Community Councils and the Council itself. Concerns include:

- Some early misunderstanding of the purpose and effect of the zones
- A failure in some cases to take account of the pattern of existing development and of landform in the drawing of boundaries, leading to anomalies
- A failure to take account of road safety constraints, leading to land being zoned for housing development in situations where a satisfactory road access to it was unlikely to be feasible
- Lack of detailed involvement by planning staff, which might have helped to minimise these difficulties; this was because it was strongly felt at the time that if the Plan was not developed and owned by local communities it would be unlikely to be supported.
- A somewhat inconsistent level of involvement by Shetland Islands Council Members, leading to a lack of a sense of ownership of both the system as a whole and the detailed boundary arrangements.

2.9 Accordingly, the Council’s Infrastructure Committee — at its meeting on 15 June 2004 — approved arrangements for the review of the zoning system. It established a Local Plan Management Group charged with taking the review

forward. The Group's membership is:

Chair of Planning Sub-Committee (name has been removed)

Planning Spokesperson (name has been removed)

Member(s) for area under consideration

Community Council representatives

Staff of Development Plans Section

3. Zoning: The Choices Available

3.1 The present system of zoning for housing development in Shetland has its origins in the late 1990s. Before that, and particularly during the mid-1970s, the approach taken to zoning was very much like that operated in the rest of the UK, namely the identification of one or more specific fields within each community for housing development. This approach worked well in the circumstances applying at that time, where the housing development that was carried out was overwhelmingly undertaken either by the Council (especially in Delting), by companies associated with Sumburgh Airport (in Sandwick and Dunrossness) and occasionally by private-sector builders elsewhere (for example some of the earlier development in the Sound area of Lerwick, or the development by Barratt Homes at Tingwall). It would also be fair to say that — given the apprehension that existed about the arrival of the oil industry — the community was generally supportive of very rigorous control of development.

3.2 This field-zoning approach is still very much the norm elsewhere in the UK, where of course development is overwhelmingly undertaken by large developers who may frequently apply for planning permission for hundreds or even thousands of houses at a time.

3.3 The organisation of housebuilding in Shetland saw changes once the immediate needs of the oil industry and related activities had been met. The emphasis shifted gradually back towards individual house building, which — setting aside Council housing - had previously been the normal approach in Shetland, albeit at a much slower rate than we are used to seeing today. That is not to say, of course, that large scale housing development does not take place: in the last few years, there have been approvals for what are, by Shetland standards, quite substantial developments, especially in Scalloway and Lerwick.

3.4 Through the later 1980s and into the 1990 the Local Plans that had been developed in the 1970s and early 1980s gradually became out of date, and it became clear that they could not adequately cope with the aspirations of the community.

3.5 A completely new approach was needed. It did not appear that a field-zoning approach was the answer. It took no account of the traditional scattered pattern of development in a crofting community or the desire of family or friends to build close to those they know. It offered no real choice of site. Although the ownership of land is not in itself a planning consideration, it is nonetheless true that the identification of a single site in each community, or perhaps two or three sites, would create, in effect, a monopoly or near-monopoly in land supply. This is one of the factors (although only one) that has led to a situation in parts of the west coast of Scotland where plots may fetch ten or twenty times the value achieved in Shetland. Generally speaking, the supply of sites — even allowing for the unwillingness of some landowners to sell - hugely exceeds the demand. The market price for land accordingly remains, by mainland standards, remarkably low, with the possible exception of Lerwick itself.

3.6 Gradually, a new approach for Shetland began to emerge. The aim was to offer a good choice of sites within areas of established settlement where roads, facilities and services were available. In the areas closest to Lerwick, where demand has been highest, it became apparent that some clustering of housing development had already occurred (for instance in Gulberwick or Tingwall). Our consultations suggested that it would probably be sensible to reinforce that trend in order to ensure that open green areas survived between clusters, retaining the impression of a rural area rather than a suburban one. Farther away from the town, with less pressure for development and a desire to promote development to stabilise fragile communities, the need for any sort of clustering became less obvious and there could be more freedom to build almost anywhere within the area of established settlement, provided a few basic criteria were met.

3.7 The fundamental question for the zoning review is whether or not this is still the right approach. The alternative, the zoning of a small number of areas within each community, is of course still available should we wish to pursue it. We have argued that field-zoning is, in general, unsuited to Shetland crofting communities,

where development has traditionally been scattered. Over large areas of rural Shetland, that argument appears still to be valid, even if the scattering of housing development no longer stems from the way people worked the land.

3.8 But the 'pressure areas' within, say, 20 minutes of Lerwick may require a somewhat different approach. No-one would claim that some communities closest to Lerwick still retain the character of traditional scattered crofting settlements. Some of them are little different from the suburban parts of Lerwick. Indeed, we detect concerns from a number of communities that their settlement is being transformed in unacceptable ways by increasing numbers of new houses. The concern is that these areas are losing their rural character and becoming more like suburbia. The process by which this happens is rather like the formation of a traffic jam: everyone wants to go in the same direction, everyone agrees on the attractiveness of where they want to go, but nobody much likes the result. Any solution to this problem requires us to recognise that in areas of high demand it is impossible both to retain the character and identity of rural Shetland allow large amounts of suburban-style development.

3.9 Does this mean that we should adopt a system much more like 'field- zoning'? Possibly, but in practice it may well be possible to adapt our system to achieve a similar result. If a more controlled approach is wanted, it would be perfectly possible to use the Shetland system in a more focused way, for example by allocating a reasonable amount of zone 1 land in each community but having only limited areas — and quite possibly none at all - of zone 2 and 3 land. In these pressure areas, there would almost certainly be a great deal more land in zone 4. In that sense, the Shetland system has potential to offer flexible solutions tailored more closely than at present to local community wishes. In any event, these options can be considered during the review.

3.10 Another consideration is the design of new housing. In relation to relatively large-scale development, the community's willingness to absorb more housing is almost certainly linked to the quality of design and the way that new development fits into the area. That is certainly reflected in attitudes to developments in a number of places. Indeed, it would be surprising if it were otherwise. The Council is at liberty to promote and indeed require appropriate standards of design — this is a normal part of the planning process in Britain — in order to ensure that new

development reflects and supports the unique identity of the islands. It is arguable that if it were to do so communities would find it much easier to come to terms with new development. The forthcoming document, 'The Shetland House', an advisory document which is expected to be published before the end of the year, is partly aimed at addressing such concerns. This is another respect in which there are choices to be made.

4. Organisation of the Review

4.1 We turn finally to the way in which the review of housing zoning will be organised. We believe that the Review needs to be based on a sound understanding on the part of Councillors and Community Councillors of the nature and purpose of the planning system and particularly that part of it concerned with the Development Plan. As we have seen, one of the criticisms expressed about the system as it stands is that at least some of those involved in the 'Plan Ahead' process (and perhaps subsequently) did not understand the planning system of which the zoning system is a part and, therefore, did not realise the implications of what they were undertaking. Planning Service staff did try very hard to explain the process and in some cases attended two or three (or more) follow-up meetings with Community Councils. Nevertheless, we believe that we need to provide more information, explanation and training if the review is to lead to a successful outcome.

4.2 We must emphasise that this is not a matter of training people in the workings of the present zoning system, though we would hope in passing to clarify any remaining misunderstandings about it. The aim is to have an informed debate about what sort of planning system for housing is appropriate for Shetland, in other words the question is being left open. We propose that the review process should be undertaken in two distinct phases, one concerned with reaching consensus about general principles and the other aimed at applying those principles to create an agreed zoning plan for each district.

4.3 In Phase 1, Councillors and Community Councillors will receive training and there will be debate and discussion about the experience of the present system and about possible zoning arrangements including the options that are available. This phase will include the dissemination of information to the wider public. There will also be consultation with all regular consultees in order to establish their views.

The aim of this will be to agree on the best system of zoning (or systems, if different approaches are to be taken in different areas. The outcome of this first phase will be an interim report to the Council's Environment and Transport Forum and Infrastructure Committee, possibly preceded by a Member seminar, which will seek to establish Council agreement on the principles to be applied in the second phase of the Review.

4.4 We have limited staff resources to apply to this work and our initial proposal in the first phase of the review is that in some cases, Community Council members will be invited to joint meetings involving more than one Community Council. We have made preliminary judgements about this based partly on the extent of difficulties that appear to exist in relation to zoning in each part of Shetland. Areas where more significant difficulties exist have been allocated individual meetings. If neighbouring Community Councils are prepared to work together in the way we propose, it will speed up the process considerably and allow us to complete the phase 1 work before Christmas. If additional meetings are required for individual Community Councils, we shall arrange these but the process will need to be extended. In considering this proposal, we would ask Community Council members to bear in mind that this first phase is concerned with general principles and with sharing experience rather than with the detail of each zoning map.

4.5 The Community Council sessions in Phase 1 will last about two and a half hours and will be split into two sections. The first section will provide a broad introduction to planning and the second will offer the opportunity to discuss experience of the present zoning system and the scope to modify it or introduce alternative systems.

4.7 Planning Officers have been assigned to each area, as follows:

Area	Member of Staff
Burra & Trondra; Tingwall, Whiteness & Weisdale; Scalloway; Dunrossness; Sandwick	(Names and numbers removed)
Bressay; Lerwick; Gulberwick, Quarff & Cunningsburgh	(Names and numbers removed)
Nesting & Lunnasting; Sandness & Walls;	(Names and numbers removed)

Sandsting & Aithsting; Delting;
Northmavine; Whalsay, Skerries
Unst; Yell; Fetlar

(Names and numbers removed)

4.8 In Phase 2, once agreement has been reached about the sort of system or systems to be applied, the Local Plan Management Group will work with Community Councils to develop a local zoning arrangement in the light of whatever system has been adopted for Shetland. This proposed zoning arrangement will then be discussed at a public meeting, arranged on plan ahead' lines, in each area.

4.9 The process of amending the Shetland Structure Plan and Shetland Local Plan will then move onto a formal basis, with the publication of draft plans, the allocation of formal periods for consultation and any necessary public inquiry into the proposed amendments.

Planning Service
Infrastructure Services Department
Grantfield
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October 2004