

## Scottish Parliament Region: West of Scotland

### Case 200502980: Inverclyde Council

#### Summary of Investigation

##### **Category**

Local government: Planning Application and Complaint Handling

##### **Overview**

The complainants (Mr and Mrs C) raised a number of concerns regarding a planning application which had been submitted to Inverclyde Council (the Council) by a developer and the handling of their complaint by the Council.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Council failed to answer questions put to them by the complainants (*upheld*);
- (b) correspondence was sent to the wrong address (*upheld*); and
- (c) the Council failed to return telephone calls (*no finding*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council make a time and trouble payment of £150 to the complainants.

The Council have accepted the recommendation.

## **Main Investigation Report**

### **Introduction**

1. The complainants shall be referred to as Mr and Mrs C. On 1 February 2006 Mr and Mrs C lodged a complaint with the Ombudsman's office. The complaint raised a number of issues over the handling of Mr and Mrs C's complaint and the granting of the planning application. The complaint had exhausted the complaints procedure of Inverclyde Council (the Council) and was, therefore, eligible for the Ombudsman to investigate.

2. Mr and Mrs C's complaint to the Council was that a planning application had been granted to a developer for a development next to Mr and Mrs C's home. Mr and Mrs C also raised a complaint with the Council that the development had been granted planning permission although there was a dispute over land ownership between the developer and Mr and Mrs C. This complaint arose due to the complexity of the relevant planning legislation. I have established that the Council were within their rights to grant planning permission although land ownership was in dispute. This is acceptable within the relevant planning legislation. The aspects of complaint I have focused on, therefore, have been in relation to the handling of Mr and Mrs C's complaint.

3. The complaints from Mr and Mrs C which I have investigated are that:

- (a) the Council failed to answer questions put to them by the complainants;
- (b) correspondence was sent to the wrong address; and
- (c) the Council failed to return telephone calls.

4. I am not reporting any of the issues in relation to the granting of the planning application as they have been previously clarified with both parties. I would like to mention that the Council followed all relevant policies and practices in administering the planning application.

### **Investigation**

5. In the course of my investigation, I obtained detailed information from the Council as well as Mr and Mrs C. I did this by making written requests of both parties. The information I obtained included copies of all the relevant

correspondence between the Council and Mr and Mrs C relating to the complaint. I also obtained a copy of the planning application to which the complaint related.

6. 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 and the Council were given an opportunity to comment on a draft of this report.

**(a) The Council failed to answer questions put to them by the complainants**

7. This aspect of complaint stems from Mr and Mrs C's belief that the Council have systematically failed to adequately respond to a number of questions put to them. The questions relate to issues around the planning authority's responsibility in terms of handling planning applications when land ownership of the proposed site is disputed. Mr and Mrs C had raised a number of such questions in their considerable correspondence with the Council regarding the planning application.

8. Mr and Mrs C raised issues with the Council over the drainage at the development. The evidence I have examined shows that these issues were not addressed for approximately 8 months.

9. The Council failed to respond to these issues within a satisfactory time frame, however, once the Council were made aware of this oversight they provided Mr and Mrs C with a response to the issues raised and apologised for the delay. Mr and Mrs C's overall complaint is understandable as they were of the view that a developer was trying to carry out a development on their land. I am led to believe that land ownership has since been attributed to Mr and Mrs C following legal action against the developer.

10. The Council have informed Mr and Mrs C that there is no statutory obligation for the Council to become involved in land dispute issues. All the relevant policies and procedures were followed in the handling of the planning application.

*(a) Conclusion*

11. Having reviewed all the evidence available to me, I have concluded that the Council's actions were unreasonable in terms of the information provided in response to Mr and Mrs C's questions regarding the development and application.

12. In conclusion, I uphold this aspect of complaint as service failure has occurred with regards to the time taken to adequately answer Mr and Mrs C's points of complaint. However, as the Council have since remedied the situation and apologised for the service failure, I have no recommendations to make relating to this aspect of complaint.

**(b) Correspondence sent to wrong address**

13. Following the commencement of my investigation, the Council reviewed their documentation and confirmed that correspondence had, in fact, been incorrectly addressed to the developer. The Council stated that they were not aware of this problem until the Ombudsman had become involved in the complaint.

14. Once the Council had identified the problem, they wrote to the complainants and apologised for the mistake and inconvenience.

*(b) Conclusion*

15. The Council have accepted that correspondence was sent to the wrong address. As a result, I uphold this aspect of complaint.

*(b) Recommendation*

16. Although the Council have apologised for this service failure, the service failure resulted in further legal action regarding the development and unnecessary inconvenience for Mr and Mrs C. In these circumstances, I recommend that a time and trouble payment of £150 be made to Mr and Mrs C.

**(c) Failure to return telephone calls**

17. Mr and Mrs C have alleged that they made numerous telephone calls regarding their complaint and left messages for staff which have gone unanswered.

18. The Council have stated that there is no record of any calls received from Mr and Mrs C regarding their complaint which was not responded to.

*(c) Conclusion*

19. Mr and Mrs C claimed that many of their telephone calls and messages were unanswered. The Council stated that they have searched their records and were unable to provide any evidence which demonstrated that calls and messages went

unanswered. In the absence of any solid evidence, I am not able to reach a finding on this aspect of the complaint.

20. The Council have confirmed that they are willing to accept my recommendations.

27 February 2007

**Explanation of abbreviations used**

The complainants

Mr and Mrs C

The Council

Inverclyde Council