

Scottish Parliament Region: South of Scotland

Case 200600648: Dumfries and Galloway Council

Summary of Investigation

Category

Local government: Planning application

Overview

The complainants (Mr and Mrs C) submitted objections to a proposed development which was to be erected near their home. The objections were submitted to Dumfries and Galloway Council (the Council) within the required time frame, however, the objections were not considered when the application was reviewed.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to consider objections when granting approval for a planning application (*not upheld*); and
- (b) failed to handle the complaint in line with the complaints procedure (*not upheld*).

Redress and recommendation

The Ombudsman recommends that the Council repeat their initial offer of meeting reasonable legal expenses incurred by Mr and Mrs C as suggested in earlier correspondence.

The Council have accepted the recommendation and will act on it accordingly.

Main Investigation Report

Introduction

1. The complainants (Mr and Mrs C) complained to the Ombudsman's office on 31 May 2006 regarding the Council's handling of a planning application by Dumfries and Galloway Council (the Council). The complaint stemmed from the Council's failure to consider Mr and Mrs C's objections when considering a planning application which affected Mr and Mrs C's neighbouring property.

2. In 2003, Mr and Mrs C entered into an agreement with a private developer (the Developer) to purchase a new home which was situated within a new development. The purchase was made 'off plan' ie the house had not yet been completed. At the time of making the agreement to purchase their home, the Developer had proposed to build a bungalow next to Mr and Mrs C's home and it is claimed that was a factor in Mr and Mrs C's decision to purchase their home.

3. Prior to construction of the bungalow, Mr and Mrs C received notification from the Developer that a planning application was to be submitted to change the proposed design of the bungalow to a two storey house. Mr and Mrs C viewed the proposed changes as highly detrimental to their amenity and lodged objections to the application with the Council on 31 March 2003. The objections were acknowledged on 7 May 2003 and Mr and Mrs C were advised that they would be given the opportunity to put their objections to the relevant Council Committee. However, the planning application had been approved on 15 April 2003, almost a full month earlier than the confirmation of receipt of the objections had been issued.

4. The complaints from Mr and Mrs C which I have investigated are that the Council:

- (a) failed to consider objections when granting approval for a planning application; and
- (b) failed to handle the complaint in line with the complaints procedure.

Investigation

5. In conducting my investigation I obtained and considered evidence from both Mr and Mrs C and the Council. I also sought the views of the Ombudsman's adviser who has experience in planning issues.

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.

7. It is important to note at this stage that both the Council and Mr and Mrs C agree that the Council failed to take the objections into consideration when assessing the planning application and this constituted a failing on the Council's part.

(a) The Council failed to consider objections when granting approval for a planning application

8. As stated at paragraph 7, the Council failed to handle Mr and Mrs C's objections in line with standard practice and this constitutes a significant failing. There are a number of other issues which have been raised by Mr and Mrs C regarding the planning application and specifically the Council's actions following their being informed that the objections had not been considered. I shall now deal with the main points in paragraphs 9 to 11 which are:

- failure to refer the formal objections to the relevant Area Committee;
- failure to revoke the planning application; and
- failure to report the situation to the relevant Planning Committee.

9. The Council granted planning permission under delegated powers as they were entitled to do. The Council's Scheme of Delegation does not allow Council Officers any post decision-making locus to refer an application to the Planning Committee once a decision to grant planning permission has been granted. The Council have confirmed to me that even had the objections been referred to the Planning Committee, the objections would almost certainly not have affected the outcome given the planning merits of the application.

10. The Council have confirmed that the fact that the objections were not considered does not allow the Council to revoke the planning permission under the relevant legislation (Town and Country Planning (Scotland) Act 1997). Ultimately, the fact that the objections were not considered did not allow the Council to revoke the planning application and doing so would breach the relevant legislation.

11. The Council have confirmed that senior officers were made aware of the situation once the failing had been brought to light. The Council have stated that the case was not referred to the Planning Committee as there was nothing

further that could be achieved by the Planning Committee. I accept the Council's position in this respect.

(a) Conclusion

12. It has been accepted by the Council that there was a failure in the handling of the objections submitted by Mr and Mrs C due to human error and an apology has also been issued. The failure to consider duly made objections to a planning application is a serious failing, however, the practice of the Ombudsman's office is not to uphold a complaint where, prior to my involvement, the authority have accepted that a mistake has occurred and they have taken steps, which satisfy me, to redress the situation. It is my view that the Council took adequate steps to redress the situation prior to my involvement. As a result, I do not uphold this aspect of complaint and the issues of complaint outlined in paragraphs 9 to 11 are also not upheld.

13. The Council have confirmed that they have introduced a system whereby a decision given under delegated powers will not be produced where objections have been entered into the system and I welcome this change. I have no recommendation to make in respect of this point of complaint.

(b) The Council failed to handle the complaint in line with the complaints procedure

14. This point of complaint relates to Mr and Mrs C's complaint that there had been substantial delays on the part of the Council in responding to correspondence submitted by Mr and Mrs C's legal representative who was pursuing their complaint.

(b) Conclusion

15. I have reviewed the evidence and it is clear that there have been delays in dealing with complaints correspondence on the part of the Council. The Council have apologised for this on more than one occasion and also provided reasons, including staff absences, for the delay.

16. Taking into consideration the fact that the Council have accepted that there have been delays in handling the complaint, apologised and made an offer of redress, I do not uphold this aspect of complaint given that it would be disproportionate to do otherwise. I am slightly concerned, however, by the delays in this case and as a result I have made the following comments and recommendations to allay my concerns.

(b) Recommendation

17. I am conscious of the fact that the Council are currently in the process of reviewing their complaints handling system, therefore, there are no recommendations regarding the delay in this case, however, I am pleased to note that the Council are actively reviewing their system with a view to introducing a new complaints system in the coming months. Therefore, the Ombudsman recommends that the Council repeat their initial offer of meeting reasonable legal expenses incurred by Mr and Mrs C as suggested in earlier correspondence.

18. The Ombudsman is satisfied with this approach and Mr and Mrs C should confirm whether or not they are prepared to accept the offer outlined in paragraph 17 above.

19. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify her when the recommendation has been implemented.

Explanation of abbreviations used

Mr and Mrs C

The complainant

The Council

Dumfries and Galloway Council

The Developer

The private developer of the site on which Mr and Mrs C's house was located

List of legislation and policies considered

Town and Country Planning (Scotland) Act 1997