

Scottish Parliament Region: West of Scotland

Case 200400660: East Dunbartonshire Council

Summary of Investigation

Category

Local government: Planning; Handling of application

Overview

The complainant (Mr C) raised a number of issues with East Dunbartonshire Council (the Council) concerning the Council's handling of three planning applications submitted for the erection of residential units on a site close to his property.

Specific complaint and conclusion

The complaint which has been investigated is that the Council, in their handling of the planning applications, have breached planning procedures and misled the public (see Annex 2) (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendation to make.

Main Investigation Report

Introduction

1. The complaint was made by a man (Mr C) on behalf of a number of residents living close to the planning site which was the subject of the complaint. The complaint concerned East Dunbartonshire Council's (the Council) handling of three planning applications submitted for the erection of residential units on the site. Mr C raised a number of issues surrounding the planning applications.

2. As part of my consideration of the complaint, and in view of the considerable amount of correspondence between Mr C and the Council, I requested confirmation from Mr C as to the terms of his complaint. Mr C confirmed his continuing concerns and also raised additional points of complaint. I accepted that these additional points had been raised with the Council as part of Mr C's submission against the planning applications, however, I did not consider that these had been put to the Council in terms of their complaints process, and as a consequence the Council had not been given the opportunity of commenting on them. Accordingly, I have not included these additional points in my investigation. It is open to Mr C to raise these matters with the Council, and, if he remains dissatisfied, to bring his complaints to the Ombudsman.

3. The complaint from Mr C which I have investigated is that the Council, in their handling of the planning applications, have breached planning procedures and misled the public (see Annex 2).

Investigation

4. Mr C made a formal complaint to the Council about their handling of the planning applications to which they replied on 8 December 2004, 29 March 2005 and 8 September 2005. Mr C subsequently wrote to the Ombudsman's office indicating that he found the Council's responses unsatisfactory.

5. My investigation of this complaint involved reading all the relevant documentation, including the detailed and extensive correspondence between Mr C and the Council. I have also obtained copies of the relevant planning reports and minutes. While I have not included every detail of my investigation in this

report, I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council, in their handling of the planning applications, have breached planning procedures and misled the public

6. Mr C's original complaint to the Ombudsman's office concerned the non-notification to the Scottish Executive of the three planning applications submitted for the erection of residential units. Mr C was advised of the need to raise his complaint with the Council under their corporate complaints process.

7. Mr C subsequently wrote to the Planning Manager (Officer 1) on 16 November 2004 detailing a number of complaints about the proposed housing development and requesting that the applications be referred to the Scottish Ministers; that a public inquiry be held; and that the Council should listen to the wishes of the residents and refuse the planning applications.

8. Officer 1 wrote to Mr C on 8 December 2004 addressing each of his points. Officer 1 explained that, as part of his investigation, all relevant files had been reviewed and interviews undertaken with members of the planning staff involved. He also explained that, if the Council were minded to grant the planning applications, they would be referred to the Scottish Ministers, in accordance with Paragraph 1 (16) (b) (i) of the Schedule to the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997.

9. Mr C subsequently wrote to the Head of Partnership and Planning (Officer 2) indicating that he disagreed with Officer 1 and again raising the points of complaint previously raised with Officer 1.

10. Officer 2 responded on 29 March 2005 explaining that he had considered Mr C's original complaint, Officer 1's response and Mr C's additional submission. Officer 2 addressed the individual points raised by Mr C and confirmed the Council's position on the matters he raised.

11. Mr C then wrote to the Chief Executive, the final stage in the Council's complaints process. He outlined why he disagreed with the response received from Officer 2.

12. The Chief Executive responded to Mr C on 8 September 2005 and indicated that, although the majority of the points being raised by Mr C had been answered in previous correspondence and had been subject to review, she had now reconsidered his complaint in full.

13. The Chief Executive detailed her response to the various issues being raised by Mr C and confirmed the Council's position. She also apologised for the delay in providing a response. Details of the Council's response to Mr C's allegation that they had, in their handling of the applications, set out to mislead the public are detailed in Annex 2 to this report.

14. On 28 June 2005, the Council granted planning permission in relation to the three applications, subject to a referral to the Scottish Ministers, a Section 69 Agreement and various conditions contained within the three planning reports.

15. The Council subsequently referred the applications to the Scottish Ministers, who advised the Council on 1 October 2005 that they did not intend to issue a direction restricting the grant of planning permission or requiring the applications to be referred to them for determination.

Conclusion

16. I have seen no evidence of failure on the part of the Council in their dealing with the planning applications. I am satisfied that the applications were processed properly in accordance with the Council's planning policy and procedure, and that all relevant planning factors – including the representations received from objectors, including Mr C, were taken into account by the Council before they made the award of planning permission in respect of the three sites. These discretionary decisions, taken without maladministration or service failure, are not open to challenge by the Ombudsman.

17. Clearly Mr C remains dissatisfied with the responses he has received from the Council and I am aware that he feels that the Council have not been interested in engaging in dialogue with him and have provided standard replies. However, I do not agree. I am satisfied that the Council have considered fully Mr C's representations and have responded in detail to each of the issues raised by him.

The Council have explained properly their position on the matter. Consequently, I do not uphold Mr C's complaint.

28 November 2006

Explanation of abbreviations used

Mr C	The complainant
Officer 1	Planning Manager
Officer 2	Head of Partnership and Planning
The Council	East Dunbartonshire Council

Annex 2

Mr C complained about the Council's handling of three planning applications for the erection of residential units. In particular he alleged that the Council had breached planning procedures and had misled the public by their:

(a) Failure to deal with his representations in line with their complaints procedure

I am satisfied that Mr C received full responses to his representations at the various stages of the Council's corporate complaint's process. While it is unfortunate that there was a delay in the response received from the Chief Executive, I am aware that she apologised for the delay when responding to Mr C's representations. I am satisfied that the apology adequately remedies any injustice Mr C feels he suffered.

(b) Decision to rename the area without notice

The Council explained that they did not accept Mr C's contention that they had adopted the name of the development site at the time of the Local Plan Proposals in 2005 to deflect attention from the specific location of the proposed housing development. The Council explained to Mr C that the name was referred to in the Bearsden and Milngavie District Council Local Plan, adopted in 1996, and, as such, it was important that the name was used in the East Dunbartonshire Local Plan Finalised Draft. I am satisfied that the Council have responded properly to Mr C's concern on this point.

(c) Inappropriate use of a name for the proposed housing development which was already in use in the area

The Council disagreed with Mr C that they had used a name already in use within the Council area to misdirect attention. They accepted that there was a park in the area with the same name but clarified that the East Dunbartonshire finalised draft Local Plan clearly identified the location of the proposed housing development. The site had been clearly marked on the proposal map in the Plan. I am satisfied that the Council have explained their position on this point.

(d) Inappropriate choice of location for the Local Plan public inquiry

Mr C alleged that due to the lack of transport links people had been unable to attend the inquiry. I am aware that the Council explained to Mr C that the Local Plan public inquiry had been fully advertised and objectors had been given the opportunity of submitting written representations or to be heard in person.

(e) Decision to provide plans for the development in a different area to that in which the complainants lived

The Council explained and I have confirmed that, in line with normal procedures, neighbour notification was carried out and details of the plans were available at the appropriate planning offices.

(f) Refusal to hold a public meeting into the planning applications

The Council explained that there was no obligation on the authority to call public meetings when planning applications are submitted. However, meetings were called by the Community Council at which both elected members and officials were present to answer questions. I do not know if Mr C took the opportunity to attend any of these meetings.

(g) Failure to take into account views expressed by the public

The Council explained that, while they had not agreed with objections submitted, they were fully taken into consideration and were referred to by the Case Officer in the Planning Reports. I have considered these documents and I am satisfied that the views of the objectors were summarised in the Planning Reports.

(h) Vested interest in the development

I am satisfied that the Council have explained that, as they had a financial interest in the site, and as they had received a great deal of local objections to the applications, in line with procedures, the applications were referred to the Scottish Ministers.

(i) Refusal to answer questions

I am satisfied that the Council have responded to the representations submitted by Mr C and have explained fully their position.