

Scottish Parliament Region: North East Scotland

Case 200501517: Aberdeenshire Council

Summary of Investigation

Category

Local government: Handling of Planning Application; Complaints by Opponents and Complaints Handling

Overview

The complainant (Ms C) raised concerns about how Aberdeenshire Council (the Council) handled a planning representation and the inadequate manner in which they dealt with the subsequent complaint about this.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) a Council employee provided misinformation by advising that objections and concerns about a Planning Application Submission would remain confidential unless plans went to Committee (*not upheld*);
- (b) the Council did not respond in good time to the subsequent complaint about the misinformation they provided (*not upheld*);
- (c) the Council inadequately responded to concerns by stating that the linking of two neighbouring houses by an extension, did not contradict their policy HOU/7 (House Extensions), about protecting the character and amenity of existing houses and surroundings (*not upheld*);
- (d) the Chief Executive and Area Manager provided ambiguous and contradictory replies to the complaint (*not upheld*); and
- (e) the Council inadequately addressed the key issues that they breached Ms C's confidentiality and misused her personal data by publishing Ms C's objections (to a Planning Application Submission) on its website (*upheld*).

The complaints at (a) and (b) were not upheld as they were resolved by the Council before Ms C came to the Ombudsman.

Redress and recommendations

The Ombudsman recommends that the Council apologise to Ms C for the failure identified, and that they respond to Ms C's question about possible breach of the Data Protection Act (1998).

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

Main Investigation Report

Introduction

1. On 6 September 2005 the Ombudsman received a complaint from Ms C against the Council. Ms C complained that the Council misinformed her when they told her that any objections and concerns she had about a Planning Application Submission would remain confidential, unless plans went to Committee. Ms C also complained that the Council inadequately addressed her subsequent complaint about this.

2. The complaints from Ms C's which I have investigated are that:

- (a) a Council employee provided misinformation by advising that objections and concerns about a Planning Application Submission would remain confidential unless plans went to Committee;
- (b) the Council did not respond in good time to the subsequent complaint about the misinformation they provided;
- (c) the Council inadequately responded to concerns by stating that the linking of two neighbouring houses by an extension, did not contradict their policy HOU/7 (House Extensions), about protecting the character and amenity of existing houses and surroundings;
- (d) the Chief Executive and Area Manager provided ambiguous and contradictory replies to the complaint; and
- (e) the Council inadequately addressed the key issues that they breached Ms C's confidentiality and misused her personal data by publishing Ms C's objections (to a Planning Application Submission) on its website.

Investigation

3. The investigation of this complaint involved obtaining and reading all relevant documentation, including correspondence between Ms C and the Council. I have also reviewed the Council's policies and procedures for publishing planning objections on its website, the Council's complaints handling guidelines, the papers relating to the granting of planning permission for the extension and what qualifies as matching building materials. A written enquiry was made of the Council on 30 January 2006 and their response was received on 13 March 2006.

4. I have not included in this report every detail investigated, however, 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.

(a) A Council employee provided misinformation by advising that objections and concerns about a Planning Application Submission would remain confidential unless plans went to Committee

5. Ms C told me that on 11 January 2005 she telephoned a Council Planning Officer (Officer 1) and specifically asked if any representation she made would be treated in confidence by the Council. Officer 1 told Ms C that her representation remained confidential unless the application was referred to Committee. Ms C made a representation secure in the knowledge received from Officer 1 that this was confidential, however, the Council states that the letter of representation appears to have been placed on-line on 17 February 2005 and in Ms C's words 'for not only the applicants but the whole world to view'.

6. Officer 1 was aware of this error, and on 28 February 2005 e-mailed Ms C to clarify the situation and to apologise for the misinformation.

7. Around the same time the application was being considered, the Council was introducing an IDOX system (IDOX is a standard electronic package which Councils use for processing planning applications and which interacts with their website) accessible through the Council's website. Officer 1 was not fully aware of these changes and that is why the wrong information was given. It had been the Council's custom and practice not to publicise letters, although strictly speaking these are not confidential.

(a) Conclusion

8. It is clear that Ms C was misinformed by Officer 1, and that the publishing of Ms C's objections has caused her considerable upset. Regardless of whether the information given to Ms C was correct, she should have been informed of the correct information before publication. However, it is clear that Officer 1 does now realise that she made a mistake and apologised to Ms C before she came to us. In these circumstances and in the absence of further error, I do not uphold the complaint.

(b) The Council did not respond in good time to the subsequent complaint about the misinformation they provided

9. There was a delay by the Council in replying to Ms C's initial complaint because of an administrative error. In his belated response to Ms C's complaint on 29 June 2005 the Area Manager (Officer 2) apologised for the delay.

10. The Council told me that the delay may have been due to other pressures on the office of Officer 2. The Council informed me that they do not consider this acceptable and Officer 2 is reviewing administration systems within the office to ensure that a similar situation cannot arise again in the future.

(b) Conclusion

11. The Council have acknowledged the delay. There has been an apology for this, and steps are being taken to ensure that this does not recur. In the absence of further error, I do not uphold the complaint.

(c) The Council inadequately responded to concerns by stating that the linking of two neighbouring houses by an extension, did not contradict their policy HOU/7 (House Extensions), about protecting the character and amenity of existing houses and surroundings

12. Ms C says the planning decision taken by the Council was wrong and breaches Council policies, as the extension linking the two neighbouring houses has irretrievably changed the character of Ms C's house and area. Before this extension was approved, Ms C's house was a semi-detached dwelling and it is now a linked semi-detached dwelling, the only such dwelling in the vicinity.

13. It is clear from the papers I have seen that the appropriate policy was taken into account in granting the relevant planning permission.

14. The Council told me there have been a number of extensions constructed in the vicinity, including the one at Ms C's house. These have been done with regard to the design and style of the existing houses and streetscape. They also told me that, in their opinion, the development in question effectively links two previously semi-detached houses in a sympathetic manner. This opinion takes into account style, materials, finishes and colours. Furthermore, the Council highlighted that the roofline is punctuated as the extension is single storey. The Council accepts that a

judgment had to be made by the Area Planning Officer (Officer 3) in the context of adopted policies.

(c) Conclusion

15. The appropriate policy was considered in reaching the decision. However, having considered the policy, the decision rests on a judgment about aesthetics. It is clear that Ms C disagrees with the judgment reached in this case. That disagreement is not evidence of maladministration or service failure. I am satisfied that the correct processes were followed by the Council to ensure that they did not contradict their policy HOU/7 (House Extensions), therefore, I do not uphold this part of the complaint.

(d) The Chief Executive and Area Manager provided ambiguous and contradictory replies to the complaint

16. I have carefully read both Officer 2's letter of 29 June 2005 and the Chief Executive's letter of 21 July 2005. The sections of the letters referred to in this complaint are those relating to the misinformation given to Ms C by Officer 1. These do contain different amounts of information about how representations about planning permission may become public.

(d) Conclusion

17. The Council has accepted that Ms C was initially misinformed by Officer 1. I accept that Ms C finds the Council's explanations of their position contradictory. However, I do not share this view and I do not uphold the complaint.

(e) The Council inadequately addressed the key issues that they breached Ms C's confidentiality and misused her personal data by publishing Ms C's objections (to a Planning Application Submission) on its website

18. Ms C's initial complaint letter of 2 March 2005 did not explicitly state that she felt her confidentiality had been breached or her personal data abused, although she did say that the fact that her neighbour knew she had objected was causing her unbearable stress. The letter of 29 June 2005 from Officer 2 to Ms C did not explicitly address that as an issue.

19. In her letter of 11 July 2005, Ms C questioned whether the Council's publishing of correspondence allowing identification of individuals without their

permission might be in breach of the Data Protection Act (1998). In his reply of 21 July 2005 the Chief Executive did not refer to this issue.

(e) Conclusion

20. I have carefully considered Ms C's complaint letter of 2 March 2005 and, on balance, I agree that there is no specific complaint referring to possible breaches of the Data Protection Act. However, such concerns were clearly raised in her letter of 11 July 2005 and the Council did not respond on this issue. Therefore, to this extent, I uphold this part of Ms C's complaint.

(e) Recommendation

21. The Ombudsman recommends that the Council apologise to Ms C for the failure identified, and that they respond to Ms C's question about possible breach of the Data Protection Act (1998).

22. I am pleased to note that the Council informed me that they are prepared to offer Ms C an ex-gratia payment of £100 for the distress these failings have caused. I commend the Council for this offer, and the Ombudsman acknowledges the suitability of the offer.

30 January 2007

Explanation of abbreviations used

Ms C	The complainant
The Council	Aberdeenshire Council
Officer 1	Council Planning Officer
Officer 2	Council Area Manager
Officer 3	Council Area Planning Officer
The Policy	Policy Hou/7 (House Extensions)