

## Scottish Parliament Region: West of Scotland

### Case 200601262: Loch Lomond and The Trossachs National Park Authority

#### Summary of Investigation

##### **Category**

Local government: Planning - handling of application (complaints by objectors)

##### **Overview**

The complainant (Ms C) raised a number of concerns about the way in which the Loch Lomond and The Trossachs National Park Authority (the Park Authority) dealt with a planning application for a site adjoining her property.

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

The complaints which have been investigated are that:

- (a) Ms C was unreasonably denied the opportunity to address the Planning Committee as she had requested and as she had been invited (*not upheld*);
- (b) the Park Authority deliberately and consistently refused to accept the effects of the proposed development on Ms C's home (*not upheld*);
- (c) Ms C's objections were never addressed properly (*not upheld*); and
- (d) Ms C was excluded from the planning process by the inappropriate use of standing orders (*not upheld*).

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

The Ombudsman recommends that Planning staff take care before issuing standard letters to ensure that their terms apply to the circumstances pertaining.

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

## **Main Investigation Report**

### **Introduction**

1. On 28 July 2006 the Ombudsman received a complaint on behalf of Ms C from her daughter's partner, Mr A. The complaint concerned Loch Lomond and The Trossachs National Park Authority (the Park Authority)'s decision to grant planning consent for development on a site adjoining Ms C's property. Mr A said Ms C was particularly aggrieved because she had not been allowed to address the Park Authority's Planning Committee as she had requested and as she had been invited. He said Ms C was also of the view that the Park Authority had deliberately and consistently refused to accept the effects of the development on her home which she operated as a Bed and Breakfast business; that her objections were never addressed properly and that she had been excluded from the planning process by the inappropriate use of standing orders.

2. The complaints which I have investigated are that:

- (a) Ms C was unreasonably denied the opportunity to address the Planning Committee as she had requested and as she had been invited;
- (b) the Park Authority deliberately and consistently refused to accept the effects of the proposed development on Ms C's home;
- (c) Ms C's objections were never addressed properly; and
- (d) Ms C was excluded from the planning process by the inappropriate use of standing orders.

3. Tragically, after my investigation began, Mr A died very suddenly. Thereafter, Ms C continued the complaint on her own behalf.

### **Investigation**

4. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Ms C and the Park Authority. I have also had sight of a copy of Standing Orders which were in operation at the relevant time; a Delegated Report on the application concerned signed by the Principal Planning Officer and a Planning Officer on 5 May 2005; a Draft Minute of the meeting of the Planning and Development Control Committee (the Committee) of 21 November 2005 together with a Report on the planning application concerned; a Report presented to the same Committee on 19 December 2005 and a Draft Minute of that meeting; a copy of a Guidance Leaflet issued by the Park Authority in relation to the Committee entitled 'Public

Participation and Procedure'; and photographs of the development site in relation to the complainant's house provided by Mr A.

5. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Ms C and the Park Authority were given an opportunity to comment on a draft of this report.

**(a) Ms C was unreasonably denied the opportunity to address the Planning Committee as she had requested and as she had been invited**

6. Ms C said that when she and her partner bought their house, they were aware that the site adjoining it had the benefit of planning permission which had been granted by the Park Authority's predecessor in 2000. She said that permission allowed the development of a two storey, semi detached house, the side elevation of which had one small window in the lounge and the same in an upstairs bedroom.

7. Early in 2005 new plans were submitted to the Park Authority and Ms C said that she was shocked at the size and height of the development proposed and at the extra windows which would overlook her guesthouse. On 14 March 2005 she sent a letter of objection outlining her concerns and inviting a visit to her property. The Park Authority's Director of Planning acknowledged this on 22 March 2005 confirming that Ms C's comments would be taken into account when the application was considered. The application was subsequently refused by the Director of Planning (acting under delegated powers) on 5 May 2005; one of the reasons for refusal being that, 'the proximity of the dwelling house to the southern boundary resulting in the overlooking of windows to the private garden ground of an adjacent dwelling'.

8. The planning application was later altered and re-submitted and Ms C said she then received notices, as an affected neighbour, of these further changes on 16 June and 2 August 2005. She again made her objections, which the Director of Planning confirmed (on 6 September 2005) would be taken into account.

9. On 9 November 2005 the Director of Planning advised Ms C that the planning application was to be considered by the Committee on 21 November 2005 and she was told that there was an opportunity for her to make a written request to make a verbal representation but ultimately, this would be at Members' discretion. Ms C said that she confirmed her request to

speak on 12 November 2005 and enclosed notes about what she intended to say, but was not given the opportunity to speak at the meeting. In his Report to Committee the Director of Planning recommended approval of the application as he considered that revisions to the plans (paragraph 8) were a clear improvement and overcame reasons for the previous refusal. He made reference to Ms C's objections and the Committee agreed that a site visit (arranged for 19 December 2005) would assist them to determine the application. Members further agreed that, 'no verbal representations in relation to the application would be accepted at the next Committee meeting'.

10. Ms C considered that the Report to Committee of 21 November 2005 omitted aspects of the matter she wished to emphasise, and she wrote to the Park Authority again the next day. She also enclosed a copy of the things she wanted to say at the next Committee meeting. The Director of Planning acknowledged her correspondence on 8 December 2005 saying that the planning application would be considered on 19 December 2005; that Ms C's objections would be taken into account and that if she wished to make a verbal representation she must request this in writing but that it was at Members' discretion whether to allow this. Ms C maintained that as she had twice written asking to be heard at Committee (on 12 and 22 November 2005), she had the impression that her request would be considered.

11. The site visit took place on the morning of the next Committee meeting, 19 December 2005. A copy of the Report to the Committee meeting of 21 November 2005 was again available to Members (see paragraph 9) together with a further short Report, dated 19 December 2005, once more recommending approval. Members subsequently approved the application subject to conditions.

12. Ms C is aggrieved because she said her request to make representations was not considered, as it appeared that the decision not to allow representations had already been taken (see paragraph 9). She said that until then she had been unaware of this decision because minutes (even in draft) were issued late. She said she was astonished and extremely upset having twice requested to be heard and having waited patiently throughout the process only to be told that her request had been denied.

*(a) Conclusion*

13. Whenever Ms C made objections to the planning applications for the site adjoining her house, she was told that they would be taken into account and that she could request to be heard at Committee. It was pointed out that this would be at Members' discretion. She made two such requests (see paragraphs 9 and 10). Despite the fact that a decision had been taken on 21 November 2005 not to hear verbal representations at the Committee Meeting of 19 December 2005 (see paragraph 9), she was still sent a letter on 8 December 2005 indicating that the opportunity was available to her. While this letter may well have been a 'standard' one, I can readily see how Ms C felt upset at not being heard. She felt she had done all that was required of her by making her request in writing. However, ultimately, the decision whether to hear verbal representations rested with Members' discretion and this was always made quite clear.

14. On balance, I do not uphold the complaint particularly as I am aware from the evidence before me that Ms C's objections were passed to Committee, as were her notes about what she intended to say (paragraphs 9 and 10), and were reflected in Reports made to Committee. As stated above, this was a decision for members of the Committee and I am satisfied that full information was provided prior to the Committee exercising their discretion not to hear Ms C. Nevertheless, I consider that in order to avoid confusion, and as it had already been decided not to hear representations at the Committee meeting on 19 December 2005, the letter of 8 December 2005 should not have invited objectors to request to be heard.

*(a) Recommendation*

15. The Ombudsman recommends that Planning staff take care before issuing standard letters to ensure that their terms apply to the circumstances pertaining.

**(b) The Park Authority deliberately and consistently refused to accept the effects of the proposed development on Ms C's home**

16. Ms C said that from becoming aware of the amended plans for the site next to her home she consistently availed herself of the opportunity to object. She would maintain that she clearly spelled out the effect the development would have on her home and business because of what she considered to be its severe overlooking.

17. In their response to me of 16 November 2006, the Park Authority said that

Ms C's allegation implied that their decision to approve the application ignored the effects the development would have on her house. They denied that this was the case and said that they did in fact recognise that there would be an impact and that the Report presented to Committee on 21 November 2005 provided an assessment of this impact but concluded that it 'would not result in an unreasonable loss of privacy to the occupiers ...' (see paragraph 20). They said that furthermore, a condition was attached to the planning consent removing the permitted development rights in respect of extensions or new window openings in the side elevations of the proposed house. The Park Authority maintained that these conditions were attached specifically to protect the future residential amenity of adjoining neighbours such as Ms C.

*(b) Conclusion*

18. I have had sight of Reports prepared by officers to inform members of the Committee (paragraph 4) and I am satisfied that Ms C's opinions were clearly reflected. Similarly, Ms C's letters of objection were available to members of the Committee. After considering the evidence available to me I am of the view that the Park Authority were fully aware that a new development would have an impact on Ms C's house. Notwithstanding, they granted planning permission as they were fully entitled to do, but tried to reduce that impact as much as possible. In all the circumstances, I do not uphold the complaint.

**(c) Ms C's objections were never addressed properly**

19. Ms C said that she had raised a number of objections to the proposed development about its size, position, the number and position of windows etc but that these were never addressed. However, in their response to me of 16 November 2006 the Park Authority made the point that given that planning permissions already existed for a semi detached house of virtually identical size, position and massing (see paragraph 6) very little weight could be given to objections which, they considered, in effect, wanted to restrict the new development to 'no more than a bungalow'.

20. The Park Authority said that with regard to Ms C's objections about windows and overlooking, they had been considered but the view was taken that the distance and the angle involved restricted the potential for overlooking to an acceptable level. The Park Authority also said they took efforts to restrict possible increased overlooking in the future (paragraph 17). However, their role as planning authority was to make a decision on the planning merits of the application having regard to the existence of a current consent for a very similar

proposal on the site. They explained that the fact that their decision on the planning application did not reflect Ms C's aspirations did not mean that her concerns were not taken into account and they pointed to the site visit to demonstrate how seriously they had taken Ms C's objections and representations.

*(c) Conclusion*

21. Ms C does not believe that her objections were addressed but I do not agree. The Park Authority were under an obligation to determine the application made to them bearing in mind the consent which already existed. It seems to me that as far as they were able, they tried to balance Ms C's aspirations with their obligations to the developer; accordingly, I do not uphold this aspect of the complaint.

**(d) Ms C was excluded from the planning process by the inappropriate use of standing orders**

22. Ms C was of the view that she was excluded from the planning process because she was unable to make verbal representations. My views on this are outlined above (paragraphs 13 and 14). Furthermore, she believed that her opinions about the development were not taken into account. Again, I disagree (paragraph 18). While she maintained that there was an inappropriate use of standing orders, correspondence sent to Ms C about possible opportunities to address Committee (paragraphs 9 and 10) always made the point that this would be at Members' discretion. Specifically, in relation to Ms C not being able to address the Committee after the site visit on 19 December 2005; the Park Authority advised me in their response dated 16 November 2006 that it was Members' view that their site visit provided first hand knowledge of the relationship between the development site and Ms C's house and that they had a good understanding of the potential impact of the new house. While Ms C perhaps believed that being given an opportunity to speak would have swayed members in some way, so that they would refuse the application, I have not seen evidence to substantiate this.

*(d) Conclusion*

23. I am not of the opinion that Ms C was excluded from the planning process. All the evidence before me indicates that she was fully engaged, as was her right. I do not consider that there was an inappropriate use of standing orders as it was always clear that the possibility of addressing the Committee rested with Members. In this case Members thought that after visiting the site, they

would have sufficient information upon which to make a decision and that a verbal address would add nothing further. I can see no reason to criticise them for this and I do not uphold the complaint.

24. In commenting on a draft of this report, the Park Authority confirmed that it accepted the Ombudsman's recommendation and she asks that they notify her once it has been implemented.

23 May 2007



**Explanation of abbreviations used**

Mr A	The original complainant who has since died
Ms C	The complainant
The Park Authority	Loch Lomond and The Trossachs National Park Authority
The Committee	The Planning and Development Control Committee