

## Scottish Parliament Region: South of Scotland

### Case 200601080: South Ayrshire Council

#### Summary of Investigation

##### **Category**

Local government: Planning, handling of application (complaints by applicants)

##### **Overview**

The complainant (Mr C) complained about the way in which South Ayrshire Council (the Council) handled his planning application and alleged that it failed to receive fair and proper consideration.

##### **Specific complaint and conclusion**

The complaint which has been investigated is that Mr C's planning application failed to receive fair and proper consideration (*not upheld*).

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

The Ombudsman recommends that in the future the Council bear in mind the possible consequences to planning applicants from any changes they may make in their internal policy and that they seek to keep them (or their agents) advised.

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

## **Main Investigation Report**

### **Introduction**

1. On 10 July 2006 the Ombudsman received a complaint from Mr C about the way in which South Ayrshire Council (the Council) handled a planning application that he made on 12 December 2005. He said that it failed to receive fair and proper consideration.

2. The complaint from Mr C which I have investigated is that Mr C's planning application failed to receive fair and proper consideration.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C, his planning agent and the Council. I have also had sight of the Council's Planning Procedures which applied between July 2002 and 9 March 2006; a report to Planning Committee on the 'Review of the Hearing Process at the Planning Committee' by the Depute Chief Executive and Director of Development, Safety and Regulation dated 21 February 2006 (the Review Report); and a report on Mr C's application to the Planning Committee by the same author dated 25 April 2006 (the Planning Report) together with an appended information cover sheet dated 31 March 2006. On 12 October 2006 I made a written enquiry to the Council and their formal response to me was dated 9 November 2006.

4. I have not included in this report every detail investigated but 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: Mr C's planning application failed to receive fair and proper consideration**

5. Mr C said that on 12 December 2005 he submitted a planning application to the Council for the erection of a dwelling house in the garden of his property at X Road. He said that as far as he was concerned a planning committee hearing was certain as that was the policy which applied. On 13 March 2006 his agent received an email from a Senior Planning Development Case Officer (the Senior Planning Officer) saying, 'I am looking for an extension to the statutory time period until 23 May. This is the date of Committee'. However, Mr C contended that shortly afterwards, and without notification, the hearing

date was cancelled and his application was refused under delegated powers in early April. He complained that the Council dealt with his application poorly and that it had not received fair or proper consideration, particularly when a similar application by one of his neighbours had been approved.

6. In their response to me of 9 November 2006, the Council said that the policy at the time Mr C's application was received (12 December 2005) was that all planning applications which were also the subject of third party objections (there were two on Mr C's application) were the subject of a hearing at the Planning Committee. However, on 21 February 2006 a Review Report was drafted by the Depute Chief Executive and Director of Development, Safety and Regulation recommending changes to the hearing process currently utilised by the Council. In particular, with regard to householder planning applications, it was recommended that an application would only qualify for a hearing where exceptional circumstances applied or where competent written objections were received from five or more separate households. The Review Report was formally approved by the full Council on the 9 March 2006.

7. Shortly afterwards, on 13 March 2006, the Senior Planning Officer contacted Mr C's agent requesting an extension of time to deal with the application (paragraph 5). The Council were of the opinion that this message provided no confirmation of the application being reported to Committee. I was advised that given the pressure of work, staff vacancies, the number of applications etc a further extension of time was being requested from Mr C's agents (who had already agreed an extension to 1 April 2006), because it was thought prudent, given that it had not been possible to place the application on an agenda for the Planning Committee, to set the May date as a 'back stop'. The Senior Planning Officer was of the view that if further objections were received (see paragraph 6) which meant that the application had to go to Committee, then the matter could be taken at the May Committee at the latest.

8. Nevertheless, on 24 March 2006, the Senior Planning Officer wrote to Mr C's agents saying that, 'I intend to report the above application to Committee as soon as possible'. He did not make reference to the fact that the Council's hearing procedures had recently been amended.

9. In their response to me of 9 November 2006, the Council said that Mr C's application could have been considered as a possible item for the Planning Committee at its meeting on 25 April 2006, but, following their acceptance of the

Review Report on 9 March 2006, Council officers agreed to determine Mr C's application under delegated powers. After considering the a Planning Report (see paragraph 3) which had been prepared concerning Mr C's application, a decision was taken on 5 April 2006 under delegated powers to turn down the application. A formal decision notice was subsequently issued on 11 April 2006 and was notified on the Council's website. The formal decision notice was not sent to Mr C's agent until 13 April 2006 as the Council said that they wanted to send it with a covering letter given the background of correspondence. Consequently, members of the public (including Mr C) could have accessed this information before Mr C was formally advised.

### *Conclusion*

10. Mr C claimed that his application failed to receive fair and proper consideration. His expectation was that his application would be considered by a hearing of the Planning Committee and I can readily understand why he thought this. At the time his application was considered this was the procedure and, in correspondence with Mr C's agent, reference was made to Committee meetings (see paragraphs 5 and 8). Although in the interim the Council's procedure had been changed in a way in which would directly affect Mr C, he was not told, but I can see no evidence of a firm date for consideration ever being given. Mr C had an expectation and the Council's failure to update him on changes which would affect this was an unfortunate oversight.

11. However, after carefully reviewing all the information available to me (see paragraph 3) I do not consider that Mr C's application failed to receive fair and proper consideration as the same Planning Report was available to Council officers as would have been made available to members at a hearing. It is a moot point whether the outcome would have been different and this is not for me to determine as on this matter Mr C had (and went on to use) a statutory right of appeal to the Scottish Executive Inquiry Reporter's Unit (although his appeal was subsequently dismissed).

12. Although Mr C made reference in his complaint to a neighbour's application being approved (paragraph 5), the Council said that this was an application made in 2001 for the conversion, alteration and extension of an existing building to form a dwelling house and not directly comparable. In my view the circumstances are immaterial because of Mr C's right of appeal (paragraph 11).

13. On balance, after carefully reviewing all the evidence available to me, I do not uphold the complaint but, the Ombudsman recommends that in the future the Council bear in mind the possible consequences to planning applicants from any changes they may make in their internal policy and, that they seek to keep them (or their agents) advised. In this case it would have been good practice to have had transitional arrangements in place and the Ombudsman is critical of this. However, Mr C was not disadvantaged; he received a fair and proper hearing. Similarly, it is unfortunate that formal notification to Mr C went out after the decision appeared on the Council's website, but, I accept the Council's reasons for this. Mr C was not disadvantaged as the information was available to him as it was to other members of the public.

14. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

22 August 2007

**Explanation of abbreviations used**

Mr C	The complainant
The Council	South Ayrshire Council
The Review Report	Review of the Hearing Process at the Planning Committee
The Planning Report	A report to the Planning Committee dated 25 April 2006
The Senior Planning Officer	The Senior Planning Development Case Officer