

Scottish Parliament Region: Highlands and Islands

Case 200602214: Argyll and Bute Council

Summary of Investigation

Category

Local government: Policy/administration

Overview

The complainant, Mr C, complained on behalf of Mr A in connection with matters relating to the Argyll and Bute Local Plan.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the procedure followed by the Council in relation to the PAN 41 hearing on 6 January 2006 was insufficiently transparent to the public (*not upheld*);
- (b) the Council failed to acknowledge or respond to a petition submitted in April 2006 and refused to allow it as a late objection (*not upheld*);
- (c) during the consultation process relating to the Argyll and Bute Local Plan, the Council failed to communicate effectively with the local community (*not upheld*); and
- (d) the Council failed to take the community's wishes into account (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council ensure that the role of the Public Service and Licensing Committee is clarified within the Council.

The Council have accepted the recommendations and have acted on them accordingly.

Main Investigation Report

Introduction

1. Mr C and Mr A have both been active in their local community and, on 1 March 2007, Mr C complained to the Ombudsman on behalf of Mr A (who is in poor health) about Argyll and Bute Council (the Council)'s actions in relation to the Argyll and Bute Local Plan.

2. The complaints from Mr C which I have investigated are that:

- (a) the procedure followed by the Council in relation to the PAN 41 hearing on 6 January 2006 was insufficiently transparent to the public;
- (b) the Council failed to acknowledge or respond to a petition submitted in April 2006 and refused to allow it as a late objection;
- (c) during the consultation process relating to the Argyll and Bute Local Plan, the Council failed to communicate effectively with the local community; and
- (d) the Council failed to take the community's wishes into account.

Investigation

3. The investigation of this case involved obtaining and reading all the available correspondence between Mr C and Mr A and the Council. I have also had sight of: correspondence on this matter from the local residents association, the MSP and the local councillor (the Councillor); a minute of the PAN 41 hearing held on 6 January 2006; a copy of procedural notes for PAN 41 hearings; and a copy of the petition referred to in the complaint. On 9 May 2007 I made a formal, written enquiry of the Council and their response was dated 4 June 2007.

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

(a) The procedure followed by the Council in relation to the PAN 41 hearing on 6 January 2006 was insufficiently transparent to the public

5. Mr C said that he and Mr A live in a small community of about 52 houses and that the 1990 Local Plan limited any development there to small scale proposals, no more than five dwellings. From the information available to me I am aware that, on 29 January 2004, the Council initiated a public consultation period (which ran until 12 March 2004), about the Consultative Draft version of

the Argyll and Bute Local Plan. This was then followed, between 16 May and 15 July 2005, with a consultation period for the Finalised Draft Local Plan. Later, on 16 September 2005, an application for planning permission (to erect ten houses and install a discharge pipe out to sea) was advertised in the press. The development site was in the village where Mr A and Mr C live. The Council were obliged to consider this application and did so in the light of the existing Local Plan and the emerging (Finalised Draft) Argyll and Bute Local Plan. The emerging Local Plan allowed for greater development in Mr C's locality.

6. A number of objections to both the application and the Finalised Draft Local Plan had been received and the Council determined to convene a special hearing on 6 January 2006 to deal with the planning application in the context of the emerging Local Plan. This was in accordance with Planning Advice Note (PAN) 41 (Revised 1997) : 'Development Plan Departures', which provides advice to the effect that 'Authorities should consider whether it might be appropriate to give all those who made representations, the opportunity to appear at the planning committee or at a special hearing of delegated/sub-committee meeting'. Also, in accordance with paragraph 16 of the PAN, which states 'Authorities may offer respondents the opportunity, if they so request, of appearing before them to state and explain their representations. Although such an invitation remains at the discretion of the authority,...'.

7. Mr A and Mr C attended the hearing and immediately afterwards Mr C contacted his MSP about his concerns at the way the hearing had been conducted. He said that, although the hearing had been advertised as a public meeting, no participation by the general public was allowed; that councillors made their decision on the planning application on the basis of their representative location (those from outwith the area voting differently to local councillors); that the views of a statutory consultee were ignored; that the application was considered in the light of the emerging Local Plan and not in accordance with the Plan which was in existence; and that, at the end of the meeting, members of the public were unclear about the outcome.

8. The MSP took up Mr C's concerns with the Council and, on 11 January 2006, the Director of Corporate Services (the Director) wrote to Mr C. The letter confirmed that the hearing had been convened to allow parties who had made written representation, either as objectors or consultees, to voice their opinion and that they had been given notice in accordance with the Council's usual procedures. The Director advised that the meeting was not a

general opportunity for members of the public who happened to be present to offer their opinion but that it was to ensure that those who had been engaged in the planning process by submitting letters of representation had the opportunity to address the Committee. He went on to say that the PAN 41 hearing was a discretionary hearing and had been held as a result of local councillors wishing to ensure that all parties who had thus far been involved were allowed to state their case. The Director stated that all consultees had received notification of the hearing but that the organisation mentioned by Mr C in his letter to his MSP was a discretionary rather than a statutory consultee and that they had made no response to the invitation. Nevertheless, their comments had already been taken into account in the report to Committee and that Mr A, who had also attended the hearing, had read out a letter from the organisation, dated October 2005, which was their response to the Planning Department's initial consultation. Although, the Director said, there had been confusion about Mr A's role in so far as the organisation was concerned.

9. The Director also admitted that there had also been some initial confusion about the voting process as the Chairman had thought that, because the final vote had not been unanimous, it required to be referred to the Public Service and Licensing Committee. However, it was confirmed at the meeting that this was not the case. It was also confirmed in the Director's letter to Mr C that, at the hearing, the Planning Manager had given a clear explanation for the reasons why, in considering the application, weight had been given to the emerging Local Plan. The Director further said that, while some confusion had arisen about the role of the Public Service and Licensing Committee, this had been clarified before the end of the meeting and, while members of the public may not have heard this confirmation 'as by this time many members of the public were standing and there was more than a little noise', it was none the less given. The Director emphasised that there was no failure in the process.

10. Mr C remained unhappy with the Director's reply and wrote to him on 15 January 2006 reiterating his views. In particular, he repeated his unhappiness that councillors who were not local to the area had, in his opinion, voted contrary to the interests of the local community; he accepted that the Planning Department had been procedurally correct in so far as the emerging Local Plan was concerned but maintained that local councillors were unaware of the full implications of this; and he continued to believe that the procedures and decision at the hearing had been inaudible. Mr C passed copies of this letter to both his MSP and the Councillor and, on 19 January 2006, the

Councillor emailed Mr C. The Councillor addressed the various points of Mr C's letter and he provided a further explanation why the emerging Local Plan was considered to be a material consideration when considering development proposals. He advised that the weight such consideration was given depended largely upon whether particular aspects of the Plan had been subject to objections or representations. Where there had been no such representation (as in Mr C's community), the Councillor said that the Council effectively used the emerging Local Plan as Council planning policy. He said that it was upon this basis that the application for ten houses (see paragraph 5) had been determined. The Councillor ended his correspondence by saying, 'Please be assured [Mr C] that, if I felt that anything untoward was going on, I would have been first to complain to [the Director].'

11. While Mr C maintained that some aspects of the hearing were not recorded, on 7 February 2006 the minute of the PAN 41 hearing was approved at the Area Committee meeting as a correct record properly reflecting the discussions. In their comments to me, dated 4 June 2007, the Council made the point that minutes of meetings do not represent a verbatim account of everything said but, rather, are a summary of relevant points raised and the discussion surrounding these points. They must be approved by members of committee and in this case they were, on 7 February 2006.

(a) Conclusion

12. The complainant maintained that the PAN 41 hearing process was insufficiently transparent to the public (see paragraph 7). He believed that there was confusion about the outcome and that local people had not been able to state their opinions; that councillors from other communities had too much influence and that local councillors had not realised the full implications of the emerging Local Plan on their community. I do not agree. As the Council have pointed out (paragraph 8), utilisation of the PAN 41 process was at the Council's discretion and was to allow those who had already made objection or representation to state their opinions. Neither Mr C, Mr A nor representatives of the community where they lived fell into this category, therefore, they were not entitled to address the meeting. Also, with regard to the role of councillors, this is the democratic process at work. Councillors then went on to approve the minute of the meeting at the Area Committee as a correct record, confirming their satisfaction with the detail given (see paragraph 10). While there is no doubt that there was some confusion about the outcome amongst some of the attendees at the hearing (see paragraph 8), and the Ombudsman has made a

recommendation in this regard (see paragraph 13), any confusion about reference to the Public Service and Licensing Committee was clarified before the meeting ended. The fact that some people may not have heard this clarification because of the level of noise cannot be claimed to be evidence of a lack of transparency. The situation was later confirmed by the issue of the minute. In all, with reference to the evidence available, I do not uphold the complaint.

(a) Recommendation

13. The Ombudsman recommends that the Council ensure that the role of the Public Service and Licensing Committee is clarified within the Council.

(b) The Council failed to acknowledge or respond to a petition submitted in April 2006 and refused to allow it as a late objection

14. On 22 April 2006, local residents submitted a petition to the Councillor about their community being included (for planning purposes) in a wider area. The Councillor was asked to pass the petition to the Council although it was acknowledged that it was, '...probably a futile gesture but is an outlet for the bitter resentment of the majority of residents'.

15. The Councillor acknowledged the petition on 25 April 2006 and confirmed that he would pass it on to the Council as requested. In turn, the Director acknowledged receipt of the petition to the Councillor on 9 May 2006.

16. I have also had sight of an undated letter which was signed by Mr C, amongst others, and which appeared to have been sent in about August 2006, purporting to be a submission with regard to the Finalised Draft Local Plan (but see paragraph 5). The residents were advised on 2 October 2006, through their MSP, that late submissions could not be accepted as the period for consultation had ended. This was later emphasised by the Chief Executive in correspondence with Mr C on 29 November 2006. He added that, in the circumstances, those representations would not be submitted to the Public Local Inquiry which was to be held.

(b) Conclusion

17. The complainant was a signatory to a petition which was delivered to the Councillor. The Councillor, correctly, acknowledged it as it was addressed to him. The Councillor then passed it, as requested, to the Council, whose officer acknowledged it (see paragraph 15). The fact that the Director did not then go

on to also acknowledge it to the residents cannot be seen as an administrative failure. The residents, including the complainant, wanted the petition and a later letter (see paragraph 16) to be accepted as a submission to the Finalised Draft Local Plan but these were made well out of time, as the public consultation period closed on 15 July 2005. I do not criticise the Council's actions in relation to the petition and, therefore, I do not uphold this aspect of the complaint.

(c) During the consultation process relating to the Argyll and Bute Local Plan, the Council failed to communicate effectively with the local community

18. The complainant alleged that the Council did not effectively engage the local community in consultation on the Argyll and Bute Local Plan by not advising it of the implications. He believed that this was contrary to Scottish Executive¹ guidance on the consultation procedure in relation to the local plan.

(c) Conclusion

19. There were stated periods for consultation available to members of the public who wished to make representations on the Council's proposals (see paragraph 5). These were advertised in the press. While residents of the local community may have missed amendments to the local area plan, and the opportunity to submit objections, that was not the Council's responsibility. Nor were the Council required to bring specific changes that occurred throughout the consultation process to the local community's attention. I have seen no evidence to suggest that the Council did not properly advertise the opportunities to make representation or that they failed to communicate effectively. For these reasons, I do not uphold the complaint.

(d) The Council failed to take the community's wishes into account

20. Generally, Mr C said that the Council had failed to take the community's wishes with regard to the local plan process into account and, while I acknowledge that by the time of the PAN 41 hearing the community had strong views on the matter, the fact remained that the consultative periods had passed. Because the community had not made formal representation earlier, they were later prevented from speaking at the hearing and, ultimately, excluded from appearing at a Public Local Inquiry.

¹ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive

(d) Conclusion

21. The complainant's views about the emerging Local Plan were made well out of time with regard to the periods for consultation (see paragraph 17) and the Council were under no statutory obligation to accept late (nearly a year late) submissions. The Council advertised the consultation periods as they were required to do and the community had an opportunity to comment but, for whatever reason, they did not do so. They formulated their opinions too late in the process and the Council cannot be held responsible. Accordingly, I do not uphold the complaint.

22. With regard to paragraph 13, the Council have accepted the recommendations and have acted on them accordingly.

19 September 2007

Explanation of abbreviations used

Mr C	The complainant
Mr A	The aggrieved
The Council	Argyll and Bute Council
PAN 41	Planning Advice Note 41
The Councillor	The complainant's Councillor
The Director	The Director of Corporate Services