

Scottish Parliament Region: Mid Scotland and Fife

Case 200501344: Fife Council

Summary of Investigation

Category

Local government: Handling of application

Overview

The complainant (Mrs C) raised a number of concerns that Fife Council (the Council) granted planning consent for the construction of a mobile telephone mast in a residential area. The mobile telephone company erected the mast in the incorrect place, and then applied retrospectively for planning consent, this was refused on the grounds of visual intrusion. Mrs C believes that the original application should also have been refused on these grounds. She has also complained that the Council claimed to have had a moratorium on the construction of mobile telephone masts on Council property at the time preventing them from offering an alternative site to the mobile telephone company. This she believes, was not true.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to give appropriate consideration to the terms of the local and structure plans with regard to scale and character when considering the original application (*not upheld*);
- (b) failed to ensure proper neighbour notification (*not upheld*); and
- (c) gave misleading advice on a Council moratorium on the erection of mobile telephone masts (*not upheld*).

Redress and Recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 28 October 2005 the Scottish Public Services Ombudsman Office received a complaint from a complainant (Mrs C). Mrs C is acting on behalf of a substantial number of residents in the area. She had previously raised her complaint with Fife Council (the Council) in line with their complaints procedure and received their final response on the matter from the Chief Executive. We have also received other representations that the decisions on the two planning applications were inconsistent

2. Mrs C explained that she was advised by her neighbour that a hole which had been excavated in an area of ground next to her garden was for the purposes of erecting a mobile telephone mast. Mrs C telephoned the Council to request clarification. She was informed that an application for consent for a mast was currently being considered. She wrote to the Council and lodged an objection to the application on 9 September 2003.

3. The application was considered by the Central Area Development Committee on 14 October 2003 at which time, Mrs C's objections were also considered. The Central Area Development Committee granted the application that day but applied conditions to the consent.

4. Following a number of complaints, enforcement staff from the Planning Department visited the site. They established that the telecommunications company had erected a mast in the incorrect position and of incorrect size. The Planning Department contacted the telecommunications company's agents advising that they were in breach of planning consent in respect of both size and location.

5. Subsequently the agents made a retrospective planning application for the retention of the newly constructed mast. A report was prepared by a planning officer which recommended refusal. On 4 May 2004 the retrospective planning application was considered by the Central Area Development Committee and was refused for the reasons given in the planning officer's report.

6. In December 2004 the telecommunications company erected a mast in the position allowed by the original planning consent. This mast was erected before

the other one was removed which unfortunately meant that, for a time, there were two masts.

7. Mrs C claimed that the Council's actions have devalued local residents homes and caused unnecessary concerns about the possible health risks as a result of erecting mobile telephone masts near residential areas. Additionally, she believed that had the Council not misrepresented its position in respect of a moratorium on mobile telephone masts on Council land, an alternative position for the mast could be found.

8. The complaints from Mrs C which I have investigated are that the Council:

- (a) failed to give appropriate consideration to the terms of the local and structure plans with regard to scale and character when considering the original application;
- (b) failed to ensure proper neighbour notification; and
- (c) gave misleading advice on a Council moratorium on the erection of mobile telephone masts.

Investigation

9. I have reviewed the correspondence provided by the complainant. I have obtained the complaints file and relevant supporting documentation from the Council. I have also reviewed the relevant legislation, planning policies and guidance (PAN 62) and the local and structure plans. During the course of my investigation I have sought to establish whether the Council took necessary steps to ensure that they gave appropriate consideration to the planning applications and objections and ensured that the statutory planning process was followed.

10. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

(a) The Council failed to give appropriate consideration to the terms of the local and structure plans with regard to scale and character when considering the original application

11. In the planning report for the original application (04/01036/CFULL) the Council detailed four material planning considerations. These related to representations received, consultation responses, the development plan and government guidance.

12. The Development Plan for this area is the Glenrothes Area Local Plan 2003 (the Development Plan). Planning officers identified two policies within the Development Plan which held relevance to this development. These were policy BE3 which relates to design standards and policy INF5 which relates to telecommunications.

13. Officers detailed in their planning report that they considered the development in respect of the above policies and concluded that the proposed mast complied with the guidance in both policies. Policy INF5 recommends that any operation of telecommunication masts ensure that they use the least obtrusive infrastructure necessary to satisfy their requirements. In this case, the application specified that a slim mast similar in design to existing street lighting be used to ensure that the development was as unobtrusive as possible.

14. The mast actually constructed was of a different type and in a different position to the one specified in the planning application. After a number of complaints the Council's Planning Enforcement Team inspected the development and found that the mast constructed was wider at the base, and for a greater proportion of its length, than that which was given permission. It was also in the wrong place.

15. After notification that the mast did not comply with planning consent, the developer made a retrospective planning application (04/01036/CFULL). This application was considered using the same criteria as the original application. Planning officers, however, felt that the new specification did not comply with policies BE3 and INF5 in terms of its design and visual impact and as such was contrary to the Development Plan. Policy INF5 states that operators should use the least obtrusive infrastructure necessary to satisfy their network requirements. Planning officers considered that the increased width of the base of this mast meant that the operators were no longer using the 'least obtrusive infrastructure'.

16. In addition to breaching the terms of the Development Plan, planning officers also considered that this development was at variance with national planning guidelines as the increase in width of the mast did not conform with the existing street lighting and furniture.

17. Mrs C showed some concern about the safety of this development. The National Planning Guidelines take into account safety issues. Additionally, when these planning applications were submitted, the required International Commission for Non-Ionising Radiation Protection (ICNIRP) certification was provided to the Council. Details of the 'amber' categorisation of the development on the Mobile Operators Association 'coloured traffic light' scale was also provided. This categorisation is a guide to telecommunication operators and can be used as additional information on an application. The Council does not have any role in categorising the individual development on this scale.

(a) Conclusion

18. From my review of the planning correspondence, I conclude that the original planning application (03/02590/CFULL) was considered appropriately by planning officers and that they, and the developers complied with their statutory responsibilities.

19. Whilst it is clear that the complainant does not consider that the development was appropriate for the site, I have reviewed the background correspondence and documentation and can see no evidence that the Council failed to appropriately consider the relevant guidance. It is not for this office to question discretionary decisions by a listed authority without evidence of maladministration. Although Mrs C may believe that the Council have not properly applied the planning policies detailed in the Development Plan, I see no evidence of this. There were also differences between the original application and the later retrospective application which made it reasonable for the Council to regard the latter as not in line with the Development Plan and national planning guidelines.

20. In all the circumstances, I do not uphold the complaint.

(b) The Council failed to ensure proper neighbour notification

21. The responsibility for carrying out neighbour notification rests with the developer. However, where neighbour notification is required, the Council must ensure that they are in receipt of certification from the developer advising that they have notified all those with a notifiable interest in a development.

22. An applicant for planning permission must serve on any persons who holds a 'notifiable interest' in 'neighbouring land' a notice of the application and

a plan showing the situation or location of the development for which consent is sought. 'Neighbouring land' is defined as land which is conterminous (shares a common boundary) with or is within 4 metres of the boundary of the land for which development is proposed.

23. In this case the sole 'notifiable interest' was that of the Council as they owned the surrounding land. Mrs C's property was more than 4 metres from the site of the development and, as such, notification was not required.

24. Despite this, when making the first application the developers placed an advertisement in the local paper and informed both the local Councillor and the Community Council. Subsequently, and prior to the retrospective application, the developer notified owners of adjacent properties.

(b) Conclusion

25. From my review of the supporting documentation, I conclude that the Council have complied with their responsibilities in ensuring that the neighbour notification process was correctly completed. I do not, therefore, uphold this aspect of the complaint.

(c) The Council gave misleading advice on a Council moratorium on the erection of mobile telephone masts

26. Mrs C complained that the Council incorrectly advised that there was a moratorium on the locating of mobile telephone masts on Council land at the time of the first application. Council officers have stated that at the time of the original application to construct the mast, there was indeed a moratorium on using Council land for the erection of mobile telephone masts, unless the land was on a road corridor.

27. Notwithstanding the above, the issue of the moratorium did not arise until after consent was granted on the original telephone mast. The policies of the Council as land owners are not directly relevant when considering a planning application as the Council has a duty to determine the application as it is submitted to the planning department.

(c) Conclusion

28. I do not have any written evidence to suggest any inaccurate information was provided on the moratorium by the Council. Nor is the moratorium itself an issue which would affect the decision of planning officers. Whether or not the

Council was in a position to negotiate with the telecommunications company about future positioning of a mast, is not a planning consideration. I do not, therefore, uphold this aspect of the complaint.

21 November 2007

Explanation of abbreviations used

Mrs C	The complainant
The Council	Fife Council
The Development Plan	Glenrothes Area Local Plan 2003