

## Scottish Parliament Region: West of Scotland

### Case 200600867: East Dunbartonshire Council

#### Summary of Investigation

##### **Category**

Local government: Planning: Handling of application (complaint by opponents)

##### **Overview**

Mr C had objected to a planning application submitted by his neighbour (Mr D) for an extension<sup>1</sup>. This was granted and building work began. Mr C was unhappy that planning consent was granted and also became concerned that the extension did not comply with the planning consent granted and was of poor standard. He objected to an application for a variation of the planning consent submitted by his neighbour and complained about the way his application was handled. Mr C was also unhappy that he did not receive a final response to his complaints from the Council.

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

The complaints which have been investigated are that the Council:

- (a) failed to deal correctly with a planning application and a subsequent application for variation of the application (*not upheld*);
- (b) did not respond appropriately to concerns raised during the building process (*not upheld*); and
- (c) did not respond in full to Mr C's formal complaint (*upheld*).

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

The Ombudsman recommends that the Council:

- (i) review the Department's guidance to staff dealing with complaints raised about building works to ensure that, where appropriate, one named member of staff be identified to deal with the complainant's correspondence;
- (ii) apologise to Mr C for their delay in responding to him and his MP;
- (iii) review their complaints procedure to ensure that they meet their own standards; and

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<sup>1</sup> The Ombudsman received a similar complaint from another neighbour about this extension. This is dealt with in report number 200601465.

- (iv) review their procedures for responding to the Ombudsman's office to ensure that they do so without undue delay.

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

## **Main Investigation Report**

### **Introduction**

1. Mr D submitted a planning application for an extension to his property on 10 February 2005. This was for a 'wraparound' extension of one storey to the front and side of a detached house. Mr C objected to this on a number of grounds and said that the extension was in breach of East Dunbartonshire Council (the Council)'s own guidance. The application was revised during the planning process because of concerns raised by the Council's Planning Department (the Department). Planning permission was granted on 2 August 2005.

2. On 15 March 2006 Mr C contacted the Council again to say that building work had begun and he was concerned about the way this was being undertaken. Mr C, his local Councillor and his MP complained to the Council on a number of occasions over the following months. The MP wrote a letter of further complaint on 11 September 2006. She did not receive a response to this and on 11 December 2006 the Ombudsman decided to exercise her discretion to consider this complaint before the Council's complaints procedure had been exhausted.

3. The complaints from Mr C which I have investigated are that the Council:

- (a) failed to deal correctly with a planning application and a subsequent application for variation of the application;
- (b) did not respond appropriately to concerns raised during the building process; and
- (c) did not respond in full to Mr C's formal complaint.

### **Investigation**

4. In investigating this complaint I obtained the correspondence between Mr C and the Council and had sight of documentation relating to the planning application and variation. I considered relevant legislation and guidance. I also made specific enquiries of the Council.

5. 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.

**(a) The Council failed to deal correctly with a planning application and a subsequent application for variation of the application; and (b) The Council did not respond appropriately to concerns raised during the building process**

6. Mr D submitted a planning application for an extension to his property on 10 February 2005. The plans included a new garage. Mr C objected to the application on a number of grounds. These objections included: the extension would lead to his house being part of a terrace rather than detached; the new garage would overlap his boundary; he would be unable to maintain a wall on his own garage because of the proximity of the extension; light into his property would be reduced; there would not be sufficient garden space left; and the extension amounted to an increase of greater than 50% of the floor space.

7. Mr C's objections were put before the Planning Board on 2 August 2005, along with the Department's recommendation that consent be granted. The report from the Department responded in detail to each one of Mr C's objections. In particular, the report said: there was enough of a gap at the first storey level to prevent a terracing effect; a test had been carried out for the likely impact on light into neighbouring properties and the plans had passed; the garden space would be in line with Council guidance; and access to the gable wall for maintenance was a private legal issue and not a material planning matter. The report accepted the extension would almost join Mr C's garage and be built along the shared boundary with Mr C's property. This was acceptable as service access would be achieved from the other side, in line with Council guidance. On the question of the increase in size, while it was accepted that the size increase was contrary to Council's guidance, it was noted that the guidance allowed for flexibility and considering each case on its merit. Having done so, the report noted that the existing garage would be removed, no additional bedrooms were included and it was comparable to the footprint of an extension on Mr C's property.

8. The Department also had concerns about the effect on off-street car parking and useable garden space, given this would mean the property would now be four-bedroomed. A revised floor plan showed the removal of a box room (see paragraph 8 below). Given the removal of the box room the report said that the level of garden ground and parking was acceptable. The report said that the plans submitted stated no building works would encroach onto neighbouring properties and it was recommended that a condition be added to this effect. Planning permission was granted. Condition 3 of the planning

permission said that no part of the extension should encroach or overhang land outwith the application site. In the event that an amended design was required for rainwater goods, the applicants should submit these for written approval.

9. Mr C wrote to a Planning Officer on 14 March 2006 and said he was concerned about the proximity of a wall of the extension to his garage and the effect this would have on drainage and Condition 3 of the planning consent. Following this initial contact, Mr C wrote or telephoned the Council regularly with his concerns over the next few months. At times this included a letter to one officer and a telephone call to a second officer on the same day. Mr C often wrote or called on subsequent days. He also contacted his local Councillor and MP who pursued his concerns.

10. In summary, the concerns raised by Mr C during the building process were that: the extension was too close to his garage and there would be issues with drainage; it was not possible to roughcast the gable wall without accessing his property and he would not give permission; this wall should be completed in facing brick; the roof would overlap on to his property and builders had entered his property without permission; and the roof ridge was higher than it was in the plan. Mr C was also unhappy with the overall standard of work on the extension. The Planning Department responded to all correspondence and a number of site visits were held.<sup>2</sup> One of these visits included photographs and measurements were provided which the Council said showed that the extension did not overhang the boundary and was within the application site.

11. As a result of another site visit, Mr D was advised to halt work and to supply new plans for a variation to the application relating to the roof ridge and to the moving of a window. This was discussed in detail with Mr C at a meeting on 4 April 2006. Albeit, he only received a copy of the letter informing him of the changes and asking for his views on 7 April 2006 (the letter was dated 30 March 2006). Mr C objected to the changes proposed. On 27 April 2006 the Council wrote to Mr C to confirm that they were treating the change to a window and roof pitch as non-material variations. An internal report also dated 27 April 2006 said that they had been assessed as non-material because: the change in roof pitch was minor and would not result in the extension height being approved; the window would be repositioned 200 mm higher and this was

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<sup>2</sup> Issues over the response to his formal complaints are dealt with under heading (c).

a minor change. It was noted the window move could be carried out without an application as it fell within the category of permitted development.

12. The Council also said in their correspondence with Mr C that: matters relating to the standard of the work were for building standards to review at the completion of the work, the issue of access was a private civil matter; and the drawings specified that either rough cast or facing brick could be used and they, therefore, could not compel Mr D to use facing brick.

13. In their response to my enquiries the Council said that they were satisfied that they had acted appropriately in responding to Mr C's objections at both the initial planning and planning variation stage. At the time of drafting of this report, they confirmed that a building completion certificate had not yet been applied for. They said that the wall was in an unfinished condition but that Mr C had placed an unsatisfactory and poorly constructed fence on top of his garage which prevented access. They accepted the unfinished wall did have an impact on the amenity of the area. However, the roughcast was not required to comply with building regulations and, in this regard, Mr D would be able to apply for a variation to the building warrant. Mr C said that he had not built a fence but placed some wood on the roof to prevent damage being caused by the works.

*(a) Conclusion*

14. The details of the planning report show that all Mr C's objections were considered during the planning application process (see paragraph 8). In response to his concerns during the building process the Council stopped work, pursued and obtained revised plans for the roof pitch and gable end and gave Mr C a chance to object to the proposed variations. Having considered the matter, they explained clearly to Mr C that the variations requested were non-material variations and did not require full planning permission. On this point, I have noted that there was significant contact between the Council and Mr D's architects in an attempt to bring about a resolution to these matters. They have repeatedly confirmed that the planning consent allows a choice of finishes to the wall and that they cannot compel Mr D to finish this in the manner preferred by Mr C.

15. Mr C clearly remains unhappy that planning permission was granted. However, my investigation has shown that the Council considered his objections properly. While he was concerned about access, it is clear from the report that this was not a material planning consideration and that the issue of

access was a private matter (see paragraph 7). Despite a delay in one letter reaching him, the Council kept Mr C fully informed of the variation and asked for his views. In the circumstances, I do not uphold this complaint.

*(b) Conclusion*

16. Mr C raised his concerns repeatedly and often with several different members of staff over a short period of time. These were all responded to and site visits arranged quickly. While it is a matter of concern that the building work has not yet been completed and the Council accept that it is affecting the amenity of the area, the Council have repeatedly explained that they can not compel Mr D to use facing brick, given the details of the planning permission. The wall does not require a finish to comply with building regulations. The Council have also said that the question of access to Mr C's property to finish roughcasting this wall is a private matter between Mr C and Mr D. On this basis, I do not uphold this complaint.

17. Although I am not upholding this complaint, I was concerned to see different members of staff responding to the same complaint on the same or subsequent days. I have noted that there was no evidence that Mr C had been given inconsistent information in the letters and telephone notes but it is clear a significant amount of time was spent by the Department responding to Mr C. The Ombudsman is, therefore, making the following recommendation.

*(b) Recommendation*

18. The Ombudsman recommends that the Council review the Department's guidance to staff dealing with complaints raised about building works to ensure that, where appropriate, one named member of staff be identified to deal with the complainant's correspondence.

**(c) The Council did not respond in full to Mr C's formal complaint**

19. The Council has a four stage complaints procedure.<sup>3</sup> On 30 March 2006 a Customer Care Officer (Officer 1) wrote to Mr C to say that she had been asked to deal with a recent letter as a formal complaint. As the first formal stage, this was stage 2 of the Complaints Procedure. Mr C had written to the Head of Planning on 28 March 2006 to repeat his concerns about the position of the wall, the roof, drainage and the materials used in the wall. He had met with the Head of Planning on 27 March 2006.

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<sup>3</sup> Set out in Annex 2.

20. Officer 1 wrote again on 7 April 2006 with a formal response. This said the Council did not uphold Mr C's complaints and provided information about their responsibilities on a number of planning matters<sup>4</sup>. Mr C responded on 13 April 2006 and copied his response to the Chief Executive. She asked the Acting Corporate Director (the Director) to respond. He did so on 21 April 2006. This completed stage 3 and the Director's letter indicated that if Mr C wished this could be dealt with at a more senior level. On 26 April Mr C asked for such a review.

21. On 12 June 2006 the MP wrote to the Council to say that Mr C had not received a response to his concerns. A letter of 26 June 2006 to the MP asked for further information as it appeared all letters had been responded to. On 9 August 2006 the MP forwarded a letter from Mr C which set out his complaint. This was acknowledged and the MP told that this was being considered by the Department. The MP wrote again on 11 September and 2 November 2006 seeking a reply.

22. Mr C had contacted the Ombudsman's office in June 2006. I contacted the Council in August and October 2006 and was assured that this was being dealt with. I was also informed that similar complaints had been raised by an MSP and a meeting was being arranged with the MSP, after which the Chief Executive would respond. The MSP had been contacted by another neighbour, Mr B, who was also pursuing a complaint about the extension. Mr B was aware of Mr C's concerns and referred to these in his correspondence<sup>5</sup>. In November I was informed that, following this meeting, a full re-investigation would occur and a letter of response sent to both Mr C and Mr B. No response was forthcoming and on 11 December 2006 I confirmed that I would proceed to investigate this complaint. The letter said I understood that they intended to respond in full and to send me a copy when they did so. On 7 February 2007 I sent a letter requesting specific documentation and again asking for a full response from the Council. The response from the Chief Executive was received on 1 May 2007. She apologised for the delay and said that the 'handling of this particular complaint has not been discharged within the agreed timescales and that this has been unhelpful and unsatisfactory'. She explained that, while it did not excuse the delay, the Council had been undergoing a

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<sup>4</sup> The details of the responses to particular concerns are included under heading (a) and (b).

<sup>5</sup> Mr B also brought his complaint to the Ombudsman. See report number 200601465.



significant period of change within the management structure, which included a death and a number of senior officers leaving.

*(c) Conclusion*

23. I have already said that the Department responded on a very regular basis to Mr C's repeated concerns on specific matters relating to the building works. Once his concerns were raised through the complaints procedure this was processed well until April 2006, when his wish that this be progressed further received no response. Despite the involvement of his MP, a full response was not received until May 2007. In addition, although I wrote to the Council on 11 December 2006 and on 7 February 2007 requesting information, I only received a detailed response on 1 May 2007.

24. While the Council have provided explanations for this delay, they have accepted these are not excuses and admitted, without reservation, to their failings in the handling of this complaint. I commend them for doing so. I have also noted that similar complaints were being raised by a second complainant who referred to and supported Mr C's concerns and that they had intended to undertake a full review following the MSP contact. However, this full review did not occur and Mr C was not informed by the Council that they were intending to do this or even that his complaint was still under consideration. The Council's failure to fulfil the requirements of their own complaints procedure was a failing. In the circumstances, I uphold this complaint.

*(c) Recommendation*

25. The Ombudsman recommends that the Council:

- (i) apologise to Mr C for their delay in responding to him and his MP;
- (ii) review their complaints procedure to ensure that they meet their own standards; and
- (iii) review their procedures for responding to the Ombudsman's office to ensure that they do so without undue delay

26. 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.

21 November 2007

**Explanation of abbreviations used**

Mr D	The complainant's neighbour, who made the planning application
Mr C	The complainant
The Council	East Dunbartonshire Council
The Department	The Planning Department
MP	Mr C's MP
Officer 1	The Customer Care officer who responded to Mr C's complaint
The Director	Acting Corporate Director
The MSP	Mr B's MSP
Mr B	The complainant's neighbour, who also objected to the planning application

**East Dunbartonshire Complaints Procedure <sup>6</sup>**

**Stage 1:**

Informal: normally verbal complaints responded to by the staff involved. If the person making the complaint is not satisfied with the response they should be informed they are entitled to make a formal complaint.

**Stage 2:**

Formal Investigation: On receipt of a formal complaint an acknowledgement is to be sent within five working days and a full response within 20 working days. This can be extended if this is complex and the complainant should be informed of this and when a response will be likely. At this stage the response should be by the Head of Service or Nominated Officer.

**Stage 3:**

Review: If they remain unsatisfied, complainants should be advised they have a right to request a review from the relevant Strategic Director. They should be asked to request a review within ten working days of the date of the formal response. The same time limits apply as for stage 2. The response could come from a nominated officer.

**Stage 4:**

Appeal: If they remain unsatisfied, complainants have a right to appeal to the Chief Executive. Again they should be advised to do so within ten working days and the same time limits apply for the response as stage 2. The response could come from a nominated officer.

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<sup>6</sup> The information in this annex is my own summary of East Dunbartonshire's procedure and sets out the main stages and relevant guidance relating to these. Staff are provided with more detailed guidance.