

Scottish Parliament Region: Highlands and Islands

Case 200602924: The Highland Council

Summary of Investigation

Category

Local government: planning; objection to planning application by neighbour

Overview

The complainants (Mr and Mrs C) raised a number of concerns about the handling by the Highland Council (the Council) of a planning application to build a new property next to their home.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to ensure that the new property was at least 2 metres from the plot boundary, as specified in the Design Brief (*upheld*);
- (b) the Council failed to ensure that the footprint of the house did not exceed 25 percent of the plot area, as specified in the Design Brief (*not upheld*); and
- (c) Mr and Mrs C are unhappy with the Council's response to their complaints about the height of the house (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council review the case to establish if there are any lessons that can be learned for future developments of this nature.

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

Main Investigation Report

Introduction

1. On 20 December 2006, the Ombudsman received a complaint from the complainants (Mr and Mrs C) regarding the handling of a planning application by the Highland Council (the Council). This related to an application to build a new property next to their home.
2. The complaints from Mr and Mrs C which I have investigated are that:
 - (a) the Council failed to ensure that the new property was at least 2 metres from the plot boundary, as specified in the Design Brief;
 - (b) the Council failed to ensure that the footprint of the house did not exceed 25 percent of the plot area, as specified in the Design Brief; and
 - (c) Mr and Mrs C are unhappy with the Council's response to their complaints about the height of the house.

Investigation

3. The investigation of the complaint involved obtaining and reading all the relevant documentation regarding the planning application and the correspondence between Mr and Mrs C and the Council. I also requested the views of the Ombudsman's planning adviser (the Adviser) on the matter.
4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the Council were given an opportunity to comment on a draft of this report.
5. Planning consent was given for 84 private 'self-build' plots at the development site in February 2004. This was essentially outline planning permission and detailed planning permission was required for each plot. One of the conditions on the planning consent for the 84 plots was that the development would accord with the details of the Master Plan, the Development Brief and the Design Brief, unless otherwise agreed in writing by the planning authority.
6. In November 2004, the Council received an application for planning permission to build houses on two of the plots in the development, one of which was the plot next to Mr and Mrs C's current home. The Council have told us that Mr and Mrs C were not notified of the application, as their plot was still owned by the developer at that time. Mr and Mrs C lodged an application for

planning permission for the erection of their house in December 2004. Planning permission was granted for this in January 2005.

(a) The Council failed to ensure that the new property was at least 2 metres from the plot boundary, as specified in the Design Brief

7. The Design Brief stated that it was a mandatory requirement that the houses should not be closer than 2 metres to any lateral boundaries. Planning permission for the two houses, one of which was next to Mr and Mrs C's current home, was granted in February 2005. The plans show that there was only 1 metre between the house next to their property and the boundary, which clearly contravened the Design Brief.

8. After work started on the house next to their plot, Mr and Mrs C complained to the Council about the distance the house was from the boundary. This was subsequently increased to 1.3 metres.

9. The Council's Area Planning and Building Standards Manager (the Area Manager) wrote to Mr and Mrs C on 1 November 2005. He said that the submitted plans clearly marked the distance to the boundary as 1 metre, but the case officer failed to pick this point up and the plans were approved as such. When this was subsequently drawn to the Council's attention, the distance was increased to approximately 1.3 metres, as a result of negotiation. The Area Manager said that this was the maximum distance it was considered could be achieved, as the applicants had approval for a distance of 1 metre. He also said that enforcement action was discussed with the Council's Legal Services, but their advice was that this would not be achieved because of the endorsement of the submitted drawings.

10. In response to enquiries about this matter, the Council said that the purpose of the 2 metres restriction was to secure a meaningful separation between the boundaries and to achieve a general separation of 4 metres between houses. They said that the plot next to Mr and Mrs C's property is one of the smaller plots in the site and narrows towards the front because of the layout of the road. The distance between the house and boundary in the approved drawings is 1 metre at the narrowest point and 2 metres towards the rear of the house, because the site widens to the rear. The Council stated that the distance between the footprint of the house and Mr and Mrs C's house is not less than 4 metres at any point. They told us that the case officer could have sought an amendment to secure compliance with the 2 metres guideline,

but did not do so. They also said that only about a third of the length of the house is within 2 metre of the boundary.

11. Mr and Mrs C complained to the Council following the commencement of work on the development. In order to try to address their concerns, the Council said that they obtained an increase in the distance separating the two boundaries. This resulted in a minimum distance of 1.3 metres at the front of the site, increasing to 2 metres towards the rear of the house. The Council said that taking into account the skewed dimensions of the site and the fact that the 4-metre separation between houses had been achieved, the amended layout was not considered to significantly impinge on the amenity of the adjacent resident. They said that the distance to the boundary at the rear of the house was maintained and this provided the necessary privacy expected of rear gardens. They also advised Mr and Mrs C that the legal advice was that the planning permission overrode the Development Brief.

(a) Conclusion

12. The Design Brief clearly states that houses in the development should not be closer than 2 metres to any lateral boundaries. The planning consent stated that the development would accord with the details of the Master Plan, the Development Brief and the Design Brief, unless otherwise agreed in writing by the planning authority. The Council failed to take this into account when considering the planning application for the house next to Mr and Mrs C's home. This amounted to maladministration and I uphold this aspect of the complaint.

(a) Recommendation

13. The Ombudsman's view is that wherever possible and practicable, someone detrimentally affected by maladministration should be returned to the position they would have been in if the failure had not occurred. The Ombudsman also tries to ensure that the same thing does not happen to someone else. The question I have asked myself is what impact this had on Mr and Mrs C and what, if anything, can be done to put matters right. Planning permission has been approved and the Ombudsman cannot overturn this. I referred the matter to the Adviser and asked for his comments. In his response, he said that the question that had to be asked was whether a different decision would have been made if the requirements of the Design Brief had not been overlooked. He stated that:

'Had the circumstances of the skewed boundary been found to unreasonably restrict the choice of house type, without upsetting issues of

wider public interest, such as retaining the building line and not pushing the house further back into the plot just to achieve a standard of doubtful value, I am inclined to think that it could not be ruled out that a decision could have been made, consciously, to approve the plan as built anyway.'

14. In this case, the decision on whether to give permission to vary from the Design Brief would only have been capable of assessment as part of a formal planning application. It is also worth pointing out that the Ombudsman has investigated another complaint regarding a planning application that was approved in the development. In that case, permission was given to vary from the Design Brief in relation to another requirement.

15. The Adviser also asked whether the outcome would have made a material difference to the enjoyment of Mr and Mrs C's house, even if it had been possible to meet the standard. He commented that he was concerned that there was no reliable means of valuing compensation that might be paid. He said that the judgment of value would depend very much on the individual and it is quite possible that another party, such as a prospective purchaser, might not see any disadvantage in these matters.

16. In view of the advice I have received and, in particular, the comments that the Council could have properly allowed the house to be built in this position, I do not consider that it would be appropriate to recommend that the Council award compensation for their maladministration in relation to this aspect of Mr and Mrs C's complaint. However, the Ombudsman recommends that the Council review the case to establish if there are any lessons that can be learned for future developments of this nature and to avoid any such oversights in the future.

(b) The Council failed to ensure that the footprint of the house did not exceed 25 percent of the plot area, as specified in the Design Brief

17. The Design Brief states that it was a mandatory design parameter that the footprint of the houses should not exceed 25 percent of the plot area. In response to enquiries about this, the Council advised that the house as originally submitted on the application did exceed 25 percent of the plot area. However, this was changed prior to planning permission being granted. They said that the footprint of the house is 133.4 metres² and that the area of the plot is 540 metres². I have no reason to doubt that these figures are correct and the house, therefore, covers only 24.7 percent of the plot.

(b) Conclusion

18. The house does not exceed 25 percent of the plot area and meets the requirements of the Design Brief. This aspect of the complaint is, therefore, not upheld.

(b) Recommendation

19. The Ombudsman has no recommendations to make.

(c) Mr and Mrs C are unhappy with the Council's response to their complaints about the height of the house

20. The planning permission for the development states that all houses, other than those in another specified area of the development, 'will not exceed 1.5 storeys in height unless the written consent of the planning authority is otherwise obtained.' It did not specify any maximum height. The Council has advised us that the height of the house in the original application was some 7.9 metres. This was amended and the drawings that were submitted with the revised application for the plot beside Mr and Mrs C show the proposed dwelling as being 7.7 metres high. Planning permission for the house was given on 24 February 2005. This stated:

'That prior to the start of work on site, details of the ground levels and the finished floor level of the proposed house will be submitted and agreed in writing by the Planning Authority. For the avoidance of doubt, the ground levels will accord with the approved site layout and will ensure that the house is set into the site with no visible underbuild, (unless otherwise agreed in writing by the Planning Authority) all to the satisfaction of the Planning Authority.'

21. The Council have advised that amendments were secured and that the height of the house was reduced to 7.5 metres. Mr C wrote to the Area Manager on 8 September 2005 and said that the house was 7.4 metres high. He said that this was just below the maximum limit, but he could not understand how it was accepted, as it towered over their house. He said that they had wanted to build a house of 1.75 storeys, but were told that they could not do so. The Area Manager wrote to Mr and Mrs C on 13 September 2005 and said that he intended to measure the height of the house to establish whether or not it was in accordance with the approved drawings.

22. Mr C wrote to the Area Manager again on 28 September 2005 and said that he had not received a response. The Area Manager wrote to him on the following day and apologised that he had not yet responded. It was agreed that he would meet Mr C at the site on the following day. Mrs C then wrote to the Director of Planning and Development (the Director) on 27 October 2005. She said that the Area Manager had told her that the house would be re-measured, but was now saying that this may not be necessary. She said that he had stated that the maximum height for a 1.5 storey house was 7.4 metres, but the Council were approving houses at 7.7 metres.

23. The Area Manager wrote to Mr and Mrs C on 1 November 2005. He said that the original proposal for the house had not been accepted and the main concern had been the height, which at 7.8 metres was considered to exceed that normally expected of a 1.5 storey house. The applicant amended the application and reduced the height to 7.5 metres. The Area Manager said that the planning authority had adopted a 'rule of thumb' at the development, which sought to ensure the height to ridge of individual houses did not exceed 7.5 metres. He said that this had been confirmed verbally at a meeting on 29 September 2005 and he believed that the stipulation had been adhered to. The Area Manager said that houses with a height to ridge which, by choice, are below the assumed maximum would be considered acceptable. He said that individual house builders have their own views as to what style within their portfolio constituted a 1.5 storey. He said that Mr and Mrs C may have been misled in choosing their own home.

24. The Director wrote to Mr and Mrs C on 24 November 2005. He apologised if they were left with the impression that a re-measurement of the height of the house was to be undertaken as a matter of course by the Area Manager. He said that the Area Manager's recollection was that he would check with the case officer if she was satisfied with the measurements and then, if necessary, arrange for a re-measurement. The case officer had confirmed that the measurement had been taken twice with the same result on both occasions. She was satisfied that the house was below the maximum guideline height of 7.5 metres and there did not seem to be any purpose served by repeating the exercise.

25. Mr and Mrs C wrote to the Council's Chief Executive on 29 November 2005. They said that the Council had previously agreed to measure the height of the house. They stated that the case officer had visited

the site, but had been unable to take a clear measurement. They also said that it was discovered at that time that the builder was working to the original plans with a height of 8.2 metres, but the approved height was 7.7 metres. They said that the height measurement needed to be taken.

26. The Chief Executive responded on 22 December 2005. He said that advice had been sought from the Council's Legal Services and their advice had been that the planning permission that had been issued showing an approved height of 7.7 metres had to take precedence. He stated that the overall height had since been reduced to 7.5 metres and the planning officers remained happy that the measurements taken earlier were sufficient to establish this. He said that the Director had advised that an earlier committee decision had set a notional maximum at '7.7 m[etres] or thereby'. He stated that the exact height of the house was not relevant, as it was below the notional maximum and the planning officers were in little doubt that the house could be described as 1.5 storeys.

27. In response to enquiries about the matter, the Council has advised that, as a general guide, and one which is applied in the Inverness area, a 1.5 storey house should not exceed 7.5 metres to the ridge. They said that this restriction was applied throughout the development site. They also said that Mrs C's house was some 6.8 metres to ridge and the adjacent house was, therefore, 0.6 metre higher, but this did not make it unacceptable.

(c) Conclusion

28. The planning permission for the developments did not specify any maximum height for the houses, but stated that all houses, other than those in another specified area of the development, 'will not exceed 1.5 storeys in height unless the written consent of the planning authority is otherwise obtained'. The Council advised Mr and Mrs C that an earlier committee decision had set a notional maximum at '7.7 m[etres] or thereby'. However, in response to my enquiries, the Council has stated that, as a general guide, a 1.5 storey house should not exceed 7.5 metres to the ridge.

29. Mr and Mrs C are unhappy with the Council's response to their complaints about the height of the house. I have noted that the Area Manager delayed in responding to Mr C's letter of 8 September 2005, however, he apologised for this when he wrote to Mr and Mrs C on 28 September 2005.

30. The case officer has confirmed that she was satisfied that the house next to Mr and Mrs C's property is below 7.5 metres. Although I have noted that there are some discrepancies in the information provided by the Council about the maximum height of a 1.75 storey house, I am satisfied that they responded satisfactorily to Mr and Mrs C's complaints about the height of the house. This aspect of the complaint is not upheld.

(c) Recommendation

31. The Ombudsman has no recommendations to make.

32. The Board have accepted the recommendations and have acted on them accordingly.

Explanation of abbreviations used

Mr and Mrs C	The complainants
The Council	The Highland Council
The Adviser	The Ombudsman's planning adviser
The Area Manager	The Council's Area Planning and Building Standards Manager
The Director	The Council's Director of Planning and Development