

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200501923: Stirling Council

#### Summary of Investigation

##### **Category**

Local government: Planning; handling of application (complaints by opponents)

##### **Overview**

The complainant (Mr C) claimed that Stirling Council (the Council) did not take account of the views of local residents when dealing with planning applications for a Public Private Partnership (PPP) project to build a new school and new housing on land near to his home. Mr C was also of the view that that the Council did not deal with the planning applications impartially.

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

The complaints which have been investigated are that the Council:

- (a) failed to take account of the views expressed by local residents in relation to the development of a new school and housing (*partially upheld*); and
- (b) failed to apply appropriate 'standards in public life' measures when following the planning process (*not upheld*).

##### **Redress and recommendation**

The Ombudsman recommends that the Council ensure that the presentation of the volume and format of objections to development proposals and planning applications, in particular on a similar scale to those dealt with in this report, is clear in reports to Council Committees, and that such reports take care to draw a clear distinction between individual correspondence, and objections from individuals which may come collated in petition form.

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

## **Main Investigation Report**

### **Introduction**

1. On 14 October 2005 the Ombudsman received a complaint from a member of the public (Mr C), a spokesperson for a group of residents, against Stirling Council (the Council). Mr C claimed that the Council did not take account of the views of local residents when dealing with planning applications for a Public Private Partnership (PPP) project to build a new school and new housing on land near to his home. Mr C was also of the view that the Council did not deal with the planning applications impartially.

1. The complaints from Mr C which I have investigated are that the Council:
  - (a) failed to take account of the views expressed by local residents in relation to the development of a new school and housing; and
  - (b) failed to apply appropriate 'standards in public life' measures when following the planning process.

### **Investigation**

2. It is important to make clear at the outset that it has not been my role to assess or challenge the merits of planning decisions, the quality of planning information used in reports by the Council, the professional and technical judgement of Council officers, or to examine the actions of individual Councillors, but to judge whether the Council fulfilled their duties and responsibilities in a reasonable manner. Complaints about the conduct of elected Councillors is a matter for the Office of the Chief Investigating Officer at the Standards Commission for Scotland. I also advised Mr C that it was not within the power of the Ombudsman to stop development or amend planning decisions.

3. Mr C also claimed that the Council failed to carry out an Environmental Impact Assessment (EIA). The Scottish Government's Planning Advice Note 58 (PAN 58) on EIA states at paragraph 4:

'The statutory requirement for EIA applies to the types of projects described in the Environmental Impact Assessment (Scotland) Regulations 1999 (Schedules 1 and 2). EIA is always required for a Schedule 1 project which by virtue of its nature or scale is always likely to have significant environmental effects. EIA is only required for a Schedule 2 project if it is judged to have significant environmental effects. For the overwhelming majority of development projects however, normal

planning powers are perfectly adequate to gain environmental information and EIA is not required ... '

To determine whether or not an EIA was required in this case would require a consideration of the planning merits of the development which is outside my remit (see paragraph 3). It is also not the function of the Ombudsman's office to adjudicate on questions of legal interpretation, and, therefore, I cannot determine whether or not an EIA was required under the relevant statute. Therefore, this aspect of Mr C's complaint is not dealt with in this report.

4. As well as correspondence from Mr C and responses to my enquiries of the Council, I also considered relevant legislation and government guidance. These are listed in Annex 3 to this report.

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 take account of the views expressed by local residents in relation to the development of a new school and housing**

6. In December 2004 the Council appointed a consortium of local developers as the preferred bidder for a PPP project to regenerate five local secondary schools and build a new community education campus. This led to planning applications for new build schools and new housing, on the sites of the old schools, being submitted by the consortium for consideration at the Council's Environment Committee meeting on 12 May 2005. The meeting approved the applications for referral to Scottish Ministers (see paragraph 12). The applications were referred on 16 May 2005, and the then Scottish Executive<sup>1</sup> notified the Council on 9 November 2005 that Ministers had decided not to intervene in the development. At the time of writing this report, the new schools have been built but the housing developments have not yet been undertaken.

7. Mr C complained in writing, as a member of the residents' group, to the Council's Chief Executive on 18 July 2005. He alleged that Council staff and local Councillors had, in dealing with the planning applications, failed to act in a

---

<sup>1</sup> On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

fair and proper manner and that residents' concerns were not addressed. Mr C said that initially Council communication about the PPP project had talked of refurbishment of the five secondary schools, but that in September 2004 this changed to new build schools, and that the public had not been made aware that this was an option under consideration. Mr C also said that public consultation meetings which followed this change were biased towards the new build option. Mr C concluded that:

'... the PPP schools process saw the abandonment of the Council's commitment to community engagement. [The Council] has adopted practices which promoted their preferred option and discouraged public involvement.'

Mr C cited what he saw as the problems with the Council's report on the planning applications as the unjustified use of green belt land and deviation from the local Development Plan without material considerations. He said that:

'... the Environment Committee approved the applications, having failed to give due consideration to these deviations and other serious issues raised by objectors, such as traffic congestion and flooding. Members of the committee were confused by poorly presented and misleading information. Members were denied an opportunity to inspect proposed conditions to be attached to the application.'

In particular, Mr C said that the report to the Council's Environment Committee did not include any reference to the 1,050 signature petition, objecting to the development near his home, submitted by the residents' group. He was also concerned that objections from statutory consultees, such as the Scottish Environment Protection Agency (SEPA) were, in his view, misrepresented in the report to the Environment Committee. In a letter of 7 November 2005 to the Ombudsman, Mr C said that as a formal objector to the planning application, he was not given the right to represent his views at the Council meeting that discussed and decided on the application. In a further letter to the Ombudsman on 2 February 2006, Mr C said:

'As far as I am concerned, the Council has made a decision that will have a detrimental affect on the enjoyment of my land, environment and property value.'

8. The Council's Chief Executive responded to Mr C on 8 November 2005. In relation to Mr C's point that neither he, fellow members of the residents' group, nor other objectors were permitted to speak at the Environment

Committee meeting, the Chief Executive said that this would not have been feasible, but that the Committee did hear from a spokesperson for the local Community Council. The Chief Executive went on to explain that the change from refurbishment to new build came about because, after PPP bids were received from two developers in June 2004, the evaluation showed that 'new build proposals were superior to refurbishment and were also more affordable'. In terms of presenting this information to the public, he explained that:

'It had been intended to have a public information display on both sets of proposals during the summer of 2004. However, evaluation took much longer than had been anticipated and it was not until September that it was possible to share proposals more publicly. A series of public information meetings were set up. A decision was taken, rightly or wrongly, to present more detailed information on the proposals which it was felt were likely to be accepted as the preferred option.'

In terms of wider public consultation, the Chief Executive explained that there were public meetings in September 2004 and January and February 2005, and that across the whole PPP project, 14 'public information and consultation meetings' were attended by over 1,000 people. He also said that members of the PPP project team attended school board and Community Council meetings, including in Mr C's area. He said that 'an unfortunate omission' was responsible for there being no reference to the residents' group petition on the Environment Committee report on the planning application for his area, although:

'The petition was included in the 'objections file' which was in the Members' Lounge and available for inspection by all Councillors. The petition was passed in its entirety to the Scottish Executive when the applications were referred to the Scottish Executive.'

The Chief Executive also referred to Mr C's comments about SEPA information. He explained that a letter from SEPA dated 12 May 2005 (the day of the Environment Committee meeting) was received by the Council on 16 May 2005 stating that the new build should meet appropriate flood prevention standards. The Chief Executive confirmed that this matter was addressed in the planning conditions, and that all SEPA's recommended conditions had been incorporated in the information sent to the Scottish Executive.

9. In relation to the deviation from the Council's Development Plan, the Chief Executive said that the planning process allows for deviation provided justification can be made, and:

'In this case the main justification is the considerable community/public gain which will result from the developments.'

He also said that, in relation to the information presented to the Environment Committee, he had not been approached by any committee members with concerns about this aspect of the meeting. He added that proposed conditions relating to the planning applications were reported on the Council's weekly planning schedule, thus allowing both local Councillors and Community Councils to see them, therefore, providing a wider circulation than just the members of the Environment Committee. The Chief Executive also referred to legal advice received that, using some of the receipts from the sale of the old school sites and the development of housing on those sites, to partly fund the new school build on different sites (known as cross-charging) was a material consideration, but that it was for the Environment Committee to decide the weighting given to that consideration. In relation to the new build school site being on green belt, the Chief Executive also said that this was a 'significant material consideration'.

10. In response to my enquiries of the Council I received a letter from the Director of Corporate Services. He said that the public were encouraged to comment on the planning applications through neighbour notification, which included Mr C's property, and an advertisement in the local newspaper on 5 January 2005. He also reiterated the Chief Executive's point about consultation with the local Community Council. I asked specifically for an explanation for the 'unfortunate omission' which meant that the residents' group petition was not referred to in the report to the Environment Committee on 12 May 2005. The Director of Corporate Services advised me that:

'The omission was a genuine oversight. The Committee was made aware of the extent of individual objections – 254 in number.'

11. The Environment Committee meeting on 12 May 2005 considered seven papers relating to the PPP development project. These included an introductory paper giving an overview of the planning matters relating to the project, as well as specific papers on the planning applications for aspects of the project, including one paper for the development of the new build school and related facilities near to Mr C's home, and one paper for the housing to be built on the site of the old school. The overview paper noted that at the December 2004 meeting of the Council it was:

'... noted that it will be essential that the continuing concerns of communities are fully explored through the Planning Application process and the full impact of resited schools and new housing development is evaluated.'

The overview paper also noted that the development consortium:

'... have made changes to their initial planning submissions taking full account of planning issues and neighbour concerns.'

The recommendations made by planning officers to Environment Committee members in the overview paper were:

'To approve the Planning Applications, subject to Conditions, as detailed in the Appendices to this report subject to Notification of Scottish Ministers (the Council has a financial interest and proposals are Departures to the Local Plan and/or substantial body of objections has been received).'

The overview paper concluded:

'It is freely acknowledged that the new schools and replacement housing Planning Applications are contrary to normal planning policies incorporated in the development plan. However, the considerable community/public gain which will result from this package of proposals justify them being considered as acceptable departures. No precedent will be created for further developments, such as housing, on adjoining areas or similar sites as the schools can be legitimately considered as unique 'once in a lifetime' exemptions.'

12. The paper on the development of the new build school said that:

'The fundamental policy issue relating to this Application is the proposed development of a school in the countryside on Green Belt land ...'

The new build school paper included a section on objections, noting that 254 objections had been received on a range of grounds including: development on green belt; visual appearance; traffic congestion and safety; reduction in playing field facilities; sewerage and drainage infrastructure limitations; precedent; flooding; loss of privacy to adjacent properties; further travel to school; intrusion from lighting; loss of agricultural land; boundary treatments; setting of the Wallace Monument; and the potential for increasing use of a level crossing. In addition it was noted that one letter of support had been received. The paper also outlined the consultations that had taken place

with statutory consultees including: Scottish Water; SEPA; the local Community Council; the Council's Service Manager (Community Health); sportscotland; Historic Scotland; and Scottish Natural Heritage (SNH). In terms of the development on green belt, which was a key issue for Mr C's residents' group, the paper said that:

'It is accepted that this is Green Belt but argued that exceptional circumstances apply by virtue of the civic/community gain accruing from this proposal.'

13. The minutes of the Environment Committee meeting of 12 May 2005 recorded that:

'Prior to discussion the Convener advised that the ... Applications would be considered under the procedure for allowing Interested Parties to be heard ... Thereafter Elected Members would have the opportunity to ask questions and seek clarification on issues arising from the over arching report and Appendices.'

The minutes also recorded that a representative of the local Community Council spoke at the meeting in relation to the new build school near to Mr C's home. The minutes note that he:

'... indicated this proposal was a major concern within the Community; that the Community Council representatives had been subject to a hard time over the proposals that the majority of the Community welcomed. He also advised that some of the Community were opposed to the proposal.'

The minutes also recorded that in relation to this specific development proposal:

'There was also tabled for information a letter from the Secretary of [the] Community Council collating the views of some of the residents which contrasted to those before the Committee in regard to lack of time to examine the proposals, flooding, increased traffic and litter.'

14. The Council's leaflet Planning Applications: Roles and Responsibilities – A Guide (the Council's Planning Guide) stated that:

'Planning decisions affect everyone. They have an impact on the quality of the environment and on the financial value of the land. Planning decisions can be controversial and arouse considerable public interest, so it is vital that these decisions are made openly and impartially.'

In relation to the law, the Council's Planning Guide stated:



'The 1997 Town and Country Planning Act defines the type of work or change of use that requires planning permission. It says that a decision on a planning application must be made in accordance with the adopted Local Plan and Structure Plan – unless there are 'material considerations' that suggest otherwise.'

On planning officers, the Council's Planning Guide stated that they:

'Must be independent and impartial. They must not be compromised by any action ... Must not pre-judge the decision and should always make it clear that their comments are not binding on the Council ... Cannot act as an advocate but must provide advice equally to all parties ...'

On Councillors, the Council's Planning Guide stated that they:

'... are elected representatives who decide Council policy and whether or not to accept the recommendation of a Planning Officer. It is their responsibility to ensure their decisions are based on sound planning grounds. Planning officials will provide advice on this. Individual Councillors do not grant or refuse planning permission. With the exception of those cases delegated to the Director of Environmental Services, planning decisions are made collectively through the Schedule, Planning Panel or Committee ... If an application is very contentious, the Panel may decide to have a hearing where the applicant and objectors are invited to put their views.'

On Community Councils, the Council's Planning Guide stated that:

'Under planning legislation, Community Councils are consulted on major planning applications and issues affecting their areas.'

On objectors, the Council's Planning Guide stated that:

'Anyone can object to a planning application. The Council must take all relevant objections into account. The receipt of objections does not, in itself, mean that an application must be refused. The law makes it clear that objections should relate to 'material considerations' and objections that do not relate to these are not considered valid and will not be taken into account. The Council has a responsibility to ensure that certain applications are advertised. Advertisements are placed in local newspapers and, in some cases, notices are put up at the site. In [the Council] area all planning applications are publicised on the Council's Planning Schedule which is available at Libraries, local offices and on the

internet ... Sometimes the Council may want to encourage public debate by holding public meetings or staging exhibitions.'

On material considerations, the Council's Planning Guide stated that examples of possible material considerations included:

'... A draft Structure or Local Plan ... The environmental impact of the proposal ... Access, provision of infrastructure and planning history of the site ... Legitimate public concern or support expressed on relevant planning matters.'

15. The Scottish Executive Development Department document Scottish Planning Policy: SPP1 – The Planning System (SPP1) outlined the requirement to balance different needs such as sustainable development, economic competitiveness, social justice, environmental quality, design and transport. Paragraph 52 of SPP1 stated that:

'The planning system does not exist to protect the interests of one person or business against the activities of another, although in some cases private interests may coincide with the public interest. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.'

Paragraph 60 and paragraph 61 of SPP1 stated that:

'Planning authorities are legally required to consult community councils and certain statutory bodies before granting planning permission for particular classes of development. In addition the wider public has a right to view and comment to the planning authority on any application. Planning authorities should respond to comments and objections received to explain what decisions have been taken and why. Public interest in planning extends beyond those most directly affected by a proposal to the wider community. Legislation provides for registers of all planning applications to be available for public inspection. In addition, applicants for planning permission are required to notify their proposals to owners and occupiers holding an interest in neighbouring land ... Opposition to a proposal is not in itself a ground for refusing planning permission. The weight given to public concern as a material consideration should be based on the relevance of the planning issues raised. Planning authorities

should be able to demonstrate clearly how and when the opinions of interested parties were sought and taken into account.'

Paragraph 80 of SPP1 stated that:

'At the core of the planning system is the democratic accountability of decision-making.'

*(a) Conclusion*

16. It is clear that Mr C and his fellow petitioners had significant objections to the planning application to build a new school in the area near to Mr C's home, and that those objections had been made clear to the Council in, from what I have read, well-researched and detailed correspondence. The pivotal argument seems to have been the difference of opinion between the petitioners and the consortium and Council officers on what was in the public interest – maintaining the green belt or building a new school on it. It is not for me to judge which position may have been right or wrong, but it is relevant as it was a major factor on the objections to the planning applications, and my role is to determine whether or not the Council, in reaching a decision they had discretion to make, took local residents' views, including Mr C's and the petitioners, into account.

17. SPP1 and the Council's Planning Guide make clear that objections in themselves are not a reason to refuse a planning application. The simple facts are that a planning application was made, objections were received by the Council, the Environment Committee approved the application and there was no intervention in the development by Scottish Ministers. There is no third party right of appeal in the planning system, and the Ombudsman is not an appeal by proxy.

18. The Council have demonstrated that they did engage with the local public and wider community. The PPP bid proposals were shared with the public from September 2004, there were 'public information and consultation meetings' in late 2004 and early 2005, neighbour notification was carried out and there was an advertisement in the local newspaper. Statutory consultees were consulted, and the papers to, and minutes of, the Environment Committee meeting of 12 May 2005 show that Councillors were made aware of a large number and range of objections, and that a representative of the Community Council spoke at the meeting. In addition, the residents' group petition was in the objections

file in the Members' Lounge and could have been inspected by any elected member.

19. However, the Council, in the overview paper on the planning applications, described this development as 'unique' and 'once in a lifetime'. Given this, and the openly expressed deviation from the Development Plan, I am of the view that it would have been reasonable to expect the Council to be rigorous in ensuring that all relevant views were received, taken into account, and responded to. The Council, in their response to Mr C, said that a decision was taken, rightly or wrongly, to present more detailed information on the PPP bid proposals which Council officers, after evaluating them, felt were likely to be accepted as the preferred option. I understand why the Council would have taken this position but I am of the view that, regrettably, this was the wrong decision, as it gave rise to the suspicion that information was being withheld or that decisions had already been made prior to consultation. I note that in their response to Mr C the Council appear to have recognised that, with hindsight, the decision to present more detailed information on the preferred option was possibly unwise. I agree. The Council also described the fact that there was no reference to Mr C's 1,050 signature petition in the papers to the Environment Committee as an 'unfortunate omission' and that a 'genuine oversight' was responsible. While I accept the Council's explanation, it was nevertheless an administrative failing that there was not even a reference to the petition in any of the papers to the Environment Committee, given the 'once in a lifetime' nature of the development.

20. On balance, taking into account the efforts made by the Council to take the view of residents into account, and the regrettable failings identified, I partially uphold this complaint.

*(a) Recommendation*

21. The Ombudsman recommends that the Council ensure that the presentation of the volume and format of objections to development proposals and planning applications, in particular on a similar scale to those dealt with in this report, is clear in reports to Council Committees, and that such reports take care to draw a clear distinction between individual correspondence, and objections from individuals which may come collated in petition form.

**(b) The Council failed to apply appropriate 'standards in public life' measures when following the planning process**

22. In his complaint to the Chief Executive, Mr C complained that Council officers had been biased towards the proposed development of the new build school in his area, to the extent of attempting to circumvent the planning process, rather than maintaining a neutral stance.

23. I asked the Council how they could demonstrate that they had conducted the planning process appropriately. The Director of Corporate Services advised that:

'This was achieved by due diligence in the planning process, involving assessment by professional planning officers who were not involved in the team established to procure the new school. The application was then subject to rigorous assessment by the relevant body assessing the planning merits of the case (the Environment Committee), rather than any other aspects, which would be reviewed independently by other bodies in the Council.'

24. The overview paper to the Environment Committee stated that the planning applications would be submitted to Scottish Ministers due to the Council's financial interest in the proposals (see paragraph 12). The paper also stated that:

'As regards the role of [the Council] as Planning Authority, it is important to confirm that although the Council has selected [the consortium] as the preferred bidder and the Council may ultimately be entering into a contractual agreement with [the consortium], the Planning Applications should be assessed as though they were normal private sector proposals ... The Council has to satisfy Scottish Ministers as well as the general public, statutory consultees and other interested parties that the proposals have been assessed with normal rigour ...'

The minutes of the Environment Committee meeting stated that:

'Prior to discussion on the individual Applications the Chair reported that [a Councillor] would not be taking part in the voting process, as she was an Official Objector to the proposal concerning the Development of [one of the new build schools].'

The Council's Planning Guide (see paragraph 15) outlines the need for decisions to be made openly and impartially, and for planning officers to be

independent and impartial. It also outlined the role of Councillors in the planning process, which is reinforced in SPP1 (see paragraph 16).

25. The Scottish Executive issued a Planning Advice Note on The Private Finance Initiative and the Planning Process (PAN 55). Paragraph 22 of PAN 55 stated that:

'Where the sponsor body is also the planning authority, care must be taken not to compromise the function of that authority. It is essential that the roles of sponsor and planning authority are kept separate.'

Paragraph 26 of PAN 55 stated:

'... a planning authority must notify the Secretary of State if it proposes to grant planning permission for development:

- in which it has a financial interest; or
- which is to be located on land in which it has an interest;

... and the proposed development does not accord with the adopted or approved local plan for the area, or has been the subject of a substantial body of objections.'

*(b) Conclusion*

26. Given the failings identified in section (a) of this report, I can understand why Mr C believed that the Council had failed to adhere to 'standards in public life' when dealing with this planning application. However, the evidence shows me that the Council were mindful of such standards when pursuing the planning process, and I have seen no evidence that there was bias in the Council's handling of the planning applications and, therefore, I do not uphold this complaint.

27. 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.

**Explanation of abbreviations used**

Mr C	The complainant
The Council	Stirling Council
PPP	Public Private Partnership
EIA	Environmental Impact Assessment
PAN 58	Planning Advice Note (PAN 58) – Environmental Impact Assessment
SEPA	Scottish Environment Protection Agency
SNH	Scottish Natural Heritage
The Council's Planning Guide	Stirling Council leaflet Planning Applications: Roles and Responsibilities – A Guide
SPP1	Scottish Planning Policy: SPP1 – The Planning System
PAN 55	Planning Advice Note (PAN 55) – The Private Finance Initiative and the Planning Process

**Glossary of terms**

Development Plan	The development plan is an aspect of town and country planning comprising a set of documents which set out a Council's policies and proposals for the development and use of land in their area. The development plan guides and informs day to day decisions as to whether or not planning permission should be granted, under the system known as development control
Environmental Impact Assessment (EIA)	Environmental Impact Assessment is a process which identifies the environmental effects (both negative and positive) of development proposals. It aims to prevent, reduce and offset any adverse impacts
Green Belt	A strip of planned or protected open space, often consisting of recreational parks, farm land, or uncultivated land, often used to define and limit the boundaries of a community and prevent urban sprawl
Material Considerations	Any consideration which relates to the use and development of land can be a planning consideration. Whether it is 'material' depends on individual circumstances



## Public Private Partnership (PPP)

Public private partnerships are arrangements typified by joint working between the public and private sector. In the broadest sense, PPPs can cover all types of collaboration across the interface between the public and private sectors to deliver policies, services and infrastructure. Where delivery of public services involves private sector investment in infrastructure, the most common form of PPP is the Private finance initiative

**List of legislation and policies considered**

Planning Advice Note (PAN 58) – Environmental Impact Assessment

Scottish Planning Policy: SPP1 – The Planning System

Planning Advice Note (PAN 55) – The Private Finance Initiative and the Planning Process