

Scottish Parliament Region: Mid Scotland and Fife

Case 200601009: Fife Council

Summary of Investigation

Category

Local government: Planning: planning guidelines

Overview

The complainant (Mr C) raised a number of concerns regarding Fife Council (the Council)'s decision to approve his neighbour's planning application to build an extension and the way in which they responded to his enquiries.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) breached their own planning guidelines for extensions (*not upheld*);
- (b) failed in their duty to protect Mr C as an adjoining proprietor (*not upheld*);
and
- (c) failed to give Mr C timely advice when requested to do so (*upheld*).

Redress and recommendation

The Ombudsman recommends that the Council write to Mr C to apologise for their failure to provide timely responses when requested to do so.

The Council have accepted the recommendation and will act on it accordingly.

Main Investigation Report

Introduction

1. In June 2005 Mr C's neighbour submitted a planning application to build an extension. Mr C objected to the proposal as he considered that the extension would have a significant detrimental impact on his property through serious loss of amenity and property value. The planning application was, however, approved and Mr C complained to the Fife Council (the Council) stating that the application breached the Council's planning guidelines. He remained dissatisfied with the Council's final response to his complaint and asked the Ombudsman to investigate.

2. The complaints from Mr C which I have investigated are that the Council:
- (a) breached their own planning guidelines for extensions;
 - (b) failed in their duty to protect Mr C as an adjoining proprietor; and
 - (c) failed to give Mr C timely advice when requested to do so.

Investigation

3. I reviewed the evidence provided by Mr C and wrote to the Council to request further information. I examined the Council's planning guidelines (House extensions and garages), the Local Development Plan and the Building Research Establishment report 'Site layout planning for daylight and sunlight. A guide to good practice'. I also considered guidance on the Council's website and the Council's Customer Charter.

4. 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 breached their own planning guidelines for extensions; and (b) The Council failed in their duty to protect Mr C as an adjoining proprietor

5. The planning application from Mr C's neighbour was approved by the Council's Head of Development Services on 27 October 2005. Planning permission was subsequently granted by Councillors on 25 November 2005, following a recommendation of conditional approval by the planning officer (the Officer). The application was considered to be acceptable in terms of both design and residential amenity and would have no unreasonable detrimental effect upon any surrounding neighbouring properties.

6. Mr C made representations to the Council on 7 November 2005 that the proposed extension would have a negative impact on his quality of life and that it would reduce the value of his property.

7. Another objector said that the proposed extension had a flat roof, when the planning guidelines stated that a flat roof was unacceptable. It was also pointed out that part of the roof was designed as a balcony, whereas the planning guidelines stated that 'a balcony at first floor level needs to be considered carefully to avoid overlooking and to protect the amenity and privacy of adjacent properties. They are rarely acceptable'.

8. In her report to Committee, the Officer highlighted that six letters of objection had been received. Concerns raised included loss of amenity; overlooking and loss of privacy; loss of daylight and sunlight; and loss of property value. The Officer, however, considered that the proposal would result in no overshadowing of adjoining properties and noted that issues relating to loss of view and loss of property value were not considered to be material considerations and could not be taken into account in the determination of the application. The Officer also made reference to the balcony of the extension and stated 'it is considered that the proposed roof terrace would result in no additional overlooking into any neighbouring properties'.

9. In concluding her report to Committee, the Officer noted that applications are considered on their own individual merit. She assessed the application to be acceptable in terms of both design and residential amenity and considered, therefore, that it complied with policy.

10. On 27 February 2006 Mr C again wrote to the Council suggesting that their responses to his letters failed to clarify why they had contravened their own planning guidelines for house extensions. He noted that the Council's planning guidelines stated that two storey rear extensions on mutual boundaries were unlikely to be acceptable, due to potential loss of sunlight and daylight and overbearing effect on neighbouring property, and that rear extensions should be designed with a roof pitch to match the existing house; whereas the proposed extension had a flat roof which, according to Mr C, the planning guidelines stated was unacceptable. In particular, he considered that the effect on his property through loss of privacy and daylight was significant. Mr C stated that he wished to formally complain about the handling of the application.

11. The Council replied on 16 May 2006 and apologised for the delay in responding. They stated that their previous correspondence confirmed their position as Planning Authority and was covered in the Officer's report, which recommended conditional approval.

12. The Council's response went on to say that 'the Planning Authority took account of all representations submitted, and assessed the application against relevant policy guidelines and the assessment included considerations of amenity sun lighting and day lighting. It was recognised that this was a built up area where there are close relationships between adjoining properties, but the proposal was deemed to be acceptable in terms of its design, layout and impact and relationship with adjacent properties'.

13. I asked the Council to clarify what action they took to assess daylight and sunlight considerations. The Council told me that as part of her assessment of the application the Officer did not rely on the applicant's figures but carried out her own daylight and sunlight calculations, using the Building Research Establishment report 'Site layout planning for daylight and sunlight. A guide to good practice'.

14. I also asked the Council to clarify why a flat roof extension was considered acceptable in this case. The Council told me that, with regard to the flat roof construction, their planning guidelines advised that flat roofs were less acceptable than pitched roofs. They said, however, that while guidance exists, each individual proposal was considered on its own merits. They also said that this particular proposal related to a rear extension with no public view; the roof was designed to incorporate a roof terrace at first floor level and the relevant Committee report in approving the application referred to the design, its contemporary nature and its acceptability in this context.

15. I found that 'Planning Policy Guidelines for House Extensions and Garages' were issued in January 2000 and were updated in November 2006. My examination of these planning guidelines confirmed that both versions stated 'off the common boundary, two storey rear extensions should be designed with a pitch roof to match the existing house. A flat roof is unacceptable'. The development in this case is, however, a one storey extension with a roof terrace. The planning guidelines go on to say 'the inclusion of a balcony at first floor level needs to be considered carefully to

avoid overlooking and protect the amenity and privacy of adjacent properties. They are rarely acceptable'.

16. In my consideration of Mr C's complaint that the Council failed in their duty to protect him as an adjoining proprietor, I am minded that the Council's statutory duty was to determine the planning application on the basis of the Local Development Plan, unless material circumstances indicated otherwise.

17. As part of the planning process, the Council's duty is also to ensure that the public and others are given the opportunity to make their views known and have them considered in the decision making process.

18. In making his views known to the Council, Mr C considered that the extension would have a significant detrimental impact on his property, through loss of amenity and property value, and make it less marketable. The only material consideration relevant to loss of amenity, however, is whether the plans accorded with any formally adopted and published planning policy on the subject. There are no rules or guidelines either at local or national level regarding the overlooking of gardens. This is very much open to interpretation and personal judgement and taste and is not considered to be a material planning matter.

19. There are a number of criteria which are applied to all proposals for residential developments, including extensions. In this particular case, the Local Development Plan (see paragraph 3) deals with six policy criteria for satisfactory residential development in Fife. While none of these relate to privacy, policy H5(c) requires development to 'be compatible with its surroundings in terms of land use, density and relationship with existing dwellings' and policy H5 (e) relates to visual amenity.

20. Consideration of the criteria in the Local Development Plan ensures that the Council fulfils their duty to all members of the community; developers and public alike.

(a) Conclusion

21. I can understand why Mr C felt that the Council had breached their planning guidelines for extensions. In highlighting the need for any adverse effect on neighbouring property through loss of privacy and daylight to be minimised, stating that balconies at first floor level are rarely acceptable (see

paragraphs 9 and 10), the planning guidelines gave Mr C the impression that the proposed extension would not be acceptable. I have also noted that the reference in the planning guidelines stating that 'a flat roof is unacceptable' relates to two storey extensions (see paragraph 10). The extension adjacent to Mr C's property is, however, a one storey extension.

22. In considering the planning guidelines (see paragraph 3), the Officer reported that 'the property already incorporates windows at the first floor level and the roof terrace would not create any further loss of privacy onto the adjoining dwellings or their associated garden ground'. It cannot, therefore, be claimed that the public interest would be protected by avoiding overlooking, when the property already had windows which overlooked Mr C's garden.

23. The Council have stated that each individual application is considered on its own merits. The issue I have considered is whether or not, having checked the application against the Development Plan, the Council took proper account of any material considerations which may have had a bearing on the application (see paragraphs 19 and 20). I found that the Council did take account of the considerations contained in the Development Plan.

24. Having carefully considered the evidence, I have seen nothing to indicate that the Council breached their planning guidelines or planning policy and I do not, therefore, uphold this complaint.

(b) Conclusion

25. I mentioned in paragraph 17 that, as part of the planning process, the public and others should be given the opportunity to make their views known and have them considered in the decision making process. Mr C took advantage of this opportunity.

26. The Council cannot reject a proposal simply because people oppose it. As stated previously, they must look at whether the proposal is consistent with the Development Plan for the area. Other planning issues they can consider include the effect on amenity and the impact the proposal may have on the appearance of the surrounding area. I found that the Officer took account of these issues in her report to Committee (see paragraph 8).

27. Mr C was also concerned that the extension would have a negative effect on the value of his property and make it less marketable. In considering this

issue I am satisfied that the effect on local property values is not a planning issue for the Council to consider.

28. Given that the Council fulfilled their statutory duty in relation to the planning application, I can see no evidence to suggest they failed to protect Mr C. It is for this reason that I do not uphold this complaint.

(c) The Council failed to give Mr C timely advice when requested to do so

29. In considering this complaint I examined correspondence between Mr C and the Council during the period August 2005 to June 2006.

30. Mr C wrote to the Council on 23 August 2005 and on 7 November 2005 regarding planning permission for the extension. He did not receive a reply until 6 December 2005, in which the Council apologised for not replying sooner and went on to explain the basis upon which planning permission had been granted.

31. Mr C wrote to the Council again on 10 December 2005, expressing disappointment at the decision and requesting a copy of the minutes of the meeting which approved the application. He wrote again to the Council on 9 January 2006, asking for a further review of the decision to approve planning permission, and again on 21 January 2006 to request copies of photographs and notes taken following a site visit.

32. A response issued by the Council on 14 February 2006 failed to apologise for the delay in responding to Mr C's previous correspondence. It acknowledged that the requested documents would be issued to Mr C.

33. On 27 Feb 2006 Mr C wrote to the Council stating 'I now wish to complain formally about the handling of this application'. He wrote a further letter on 25 April 2006 in which he queried why, having had his complaint acknowledged on 9 March 2006, and told that a reply would be issued within ten to 14 days, he had not yet received a response. He also queried why copies of photographs and notes from the site visit, which he requested in January 2006, had not been sent to him.

34. On 16 May 2006 the Council responded to Mr C's 'previous correspondence and particularly his letters of 27 February and 25 April 2006'. They apologised for the delay in replying. In this letter the Council restated their

position in relation to the extension. They apologised again for their failure to provide previously requested documentation and advised Mr C that his request would be processed now.

35. Mr C wrote to the Council again on 30 June 2006 to advise them that he was still waiting on the requested documentation. He said that as the time limit of 20 working days had 'long past', he would now pursue this aspect of his complaint with the Scottish Information Commissioner.

36. I considered the Council's web site. It communicated their Customer Charter which stated they want customers to feel that 'it's good to do business' with the Council. The 'Customer Charter' detailed what service customers can expect of the Council, including the Council's commitment to:

- 'completing straightforward enquiries the first time you contact us, or explaining clearly any follow up action;
- telling you when you can expect to hear from us again if that's necessary;
- avoiding unnecessary delays but if this happens explaining the reasons why and providing new timescales; and
- keeping you informed.'

37. In relation to complaint handling, the Council aims to send a written acknowledgement of a complaint within five days, inform the complainant of the outcome in writing within 20 days from the date the complaint was received, or write to update the complainant every 20 days until the complaints process is completed.

(c) Conclusion

38. Mr C was entitled to ask the Council to provide information and documentation in relation to the planning decision. Where he was dissatisfied with the Council's response to that request he could have asked the Scottish Information Commissioner to investigate the matter.

39. My consideration of this complaint is, therefore, limited to the administrative process followed by the Council to respond to Mr C's correspondence and subsequent complaint.

40. While I note that Mr C's complaint was that the Council failed to give him timely advice when requested to do so, as mentioned in the previous paragraphs (see paragraphs 30 to 35), I found that the complaint actually related to delays in the Council's responses both to Mr C's enquiries about the extension and to his subsequent complaint about the matter, rather than a failure to provide advice.

41. The Council did not meet their own standard of avoiding unnecessary delays in responding to Mr C's letters of enquiry or explaining the reasons for these delays to Mr C. Neither did the Council meet their commitment to write to Mr C to update him every 20 days until the complaints process was completed.

42. Based on the evidence I have seen, I uphold Mr C's complaint, insofar as the Council failed to give him timely responses to his enquiries when requested to do so.

(c) Recommendation

43. The Ombudsman recommends that the Council write to Mr C to apologise for their failure to provide timely responses when requested to do so.

44. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify her when the recommendation has been implemented.

Explanation of abbreviations used

Mr C	The complainant
The Council	Fife Council
The Officer	The Council's planning officer

List of legislation, policies and guidelines considered

Fife Council Planning Customer Guidelines House extensions and Garages

Building research Establishment Report: Site layout planning for daylight and sunlight. A guide to good practice

Fife Council Customer Charter