

## Scottish Parliament Region: South of Scotland

### Cases 200701748 & 200801358: North Ayrshire Council

#### **Category**

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

#### **Overview**

Mr and Mrs C and Mr and Mrs D (the Complainants) are two sets of neighbours whose properties sit either side of a residential property which was granted planning permission to be extended. The Complainants are aggrieved with the Council's handling of the planning proposals for the original development and the subsequent amendments to the consent. Mr and Mrs D complained also of delay and failure by the Council to reply to their correspondence on the matter.

#### **Specific complaint and conclusion**

The complaint which has been investigated is that the Council:

- (a) mishandled the planning proposals relating to the extension of a residential property; (*upheld*) and
- (b) failed to deal properly with Mr and Mrs D's representations about these proposals (*not upheld*).

#### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) review their procedures to ensure that these contain clear advice on reporting to the Planning Committee where premature works have been carried out, whether or not these form part of the representations to a development proposal;
- (ii) formally apologise to Mr and Mrs C and Mr and Mrs D for the shortcomings identified in this report;
- (iii) make a payment of £500 to Mr and Mrs C and also to Mr and Mrs D towards their expenses; and
- (iv) examine and consider improvements in how they handle correspondence in any ongoing service review.

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

## **Main Investigation Report**

### **Introduction**

1. Mr and Mrs C and, subsequently, Mr and Mrs D (collectively referred to in this report as the Complainants) raised concerns about a planning application (Application A) for a two storey extension to each side of the adjacent residential property (the House) and a single storey extension to the rear of the House (incorporating decking with the formation of a balcony) and a detached garage to the side. The Complainants live on either side of the House. They made representations on Application A. On 18 September 2007, Application A was granted planning consent, subject to conditions, by the Planning Committee (the Committee). The Complainants subsequently complained to North Ayrshire Council (the Council) about the handling of Application A and, as they remained aggrieved with the Council's responses, separately and at different times complained to the Ombudsman. Mr and Mrs C submitted a formal complaint to the Ombudsman in January 2008. Subsequently, they complained that works on site did not accord with the planning consent granted in relation to the boundary. Following this, in July 2008, the applicant submitted a further planning application to the Council (Application B), seeking amendments to the original planning permission. Mr and Mrs D submitted a formal complaint to the Ombudsman in August 2008. Further amendments were sought to Application B by the Council, in response to the Complainants' concerns. Application B was considered by the Committee, following a site visit in September 2008. The Committee decided to grant planning consent. However, only some of the elements of Application B were approved, subject to conditions. Nevertheless, the Complainants remained concerned at the overall handling of the planning applications.

2. The complaints from the Complainants which I have investigated is that the Council:
- (a) mishandled the planning proposals relating to the extension of a residential property; and
  - (b) failed to deal properly with Mr and Mrs D's representations about these proposals.

### **Investigation**

3. My investigation of this complaint initially involved the examination of the correspondence provided by the Complainants but I subsequently obtained the Council's files and carried out interviews with Council officers and the Chair and

Vice-Chair of the Committee. I also took advice from the Ombudsman's planning adviser (the Adviser).

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

#### *Background information*

5. The area which is the subject of the complaint is steeply sloped. The properties are all large detached dwellings built in the 1930s to individual design. The Complainants' houses have been extended in the past, bringing them closer to the mutual boundary with the House.

6. In June 2007, Application A was submitted to the Council for approval to extend the House (see paragraph 1). Both sets of complainants independently made representations to the proposals on the grounds of: reduction in privacy from the planned side extensions and from the elevated decking to the rooms at the side and rear of their properties; the increased size and overall appearance of the development; their concerns about the removal of a dividing hedge; loss of sunlight to rooms and gardens and problem of overshadowing; and that the extension of the property would breach the building line at the rear. Mr and Mrs C also made representations that the plans failed to reflect accurately the drainage arrangement already installed for the proposed garage (and they were concerned that this would cause dampness and damage to their property) and that the garage would encroach on the boundary. The Council confirmed receipt of the representations and advised the Complainants that Application A had not been registered yet and was, therefore, invalid. However, their representations would be taken into account once Application A was registered and it would be considered at the next appropriate Committee meeting. The planning officer who handled the application (Officer 1) has confirmed that the Council's response to the Complainants followed a standard letter format.

7. Included with his letter of representations, Mr C raised concerns about the work already carried out to clear the site and to form the base for the proposed garage. An element of his complaint to the Ombudsman was that the Council did not respond to his concerns (see paragraph 17). He stated that the Council's enforcement officer had visited the site before Application A was submitted but took no follow-up action on being advised that it was intended to

submit a planning application, which would include proposals for a garage and driveway.

8. On 19 September 2007, the Complainants received notice from the Council that Application A had been determined by the Council on 18 September 2007 and, after consideration of all objections and representations received, had been approved subject to conditions. The Complainants were concerned that they were not advised that the application was going to the Committee and at the decision reached and they complained to Officer 1. As they were dissatisfied with his response, they pursued their complaint through the Council's complaints procedure.

9. On 26 September 2007, Mr and Mrs C formally complained to the Council's Chief Executive that the decision to grant planning consent was not taken properly because the report to the Committee was misleading and factually incorrect. In particular, they complained that the approved plans were a 'massive alteration' to the House but were incorrectly described as a minor modification and that the decking was only 'mentioned in passing' when this would be a 'massive wide raised balcony along the whole length of the rear of the property'. They complained also that the report was silent about the 'extensive alterations' which had been carried out before planning was sought.

10. Further, they complained that, although they were given notice that Application A was on hold, they were not notified when the application was registered – or when it was being presented to the Committee - and were unaware of any changes which had been made. Officer 1 had explained to them that, due to time restraints, it had not been possible to re-notify them but they were dissatisfied with his explanation. They were also dissatisfied with the advice Officer 1 gave that he was unaware of the alterations to the site (removal of the mutual boundary hedge at the front and building of a wall to support infill for the base of the garage) or that the enforcement officer had instructed work to be stopped until planning permission was obtained. Mr and Mrs D submitted their own, similar, concerns in a letter to the Chief Executive of 12 October 2007.

11. In response to these formal complaints, one of the Council's Assistant Chief Executives (Officer 2) who is responsible for planning issues, replied to the Complainants with advice that he considered the Council had acted properly and had taken their views into account when recommending the grant of

planning permission. He stated that the presentation (slides of photographs and plans of the site) left Committee members in no doubt that it was not minor modifications and he found no fault with the report's description of the size of the extension. Further, he commented that the drawings, which were available to the members at the meeting, clearly showed the extent of the decking.

12. On their concern that they were not re-notified or told when the application was being reported to the Committee, Officer 2 wrote that the changes to the plans were only received at the 'last minute' and, as they were not considered to be material, neighbour re-notification was not required. Also, that it was not normal for objectors to be kept informed of the progress of applications. On the alterations to the site pre-application, Officer 2 confirmed that this had been brought to the Council's attention and commented that it was dealt with as part of the report to the Committee. He assured the Complainants that the site would be monitored to ensure compliance with the conditions of planning consent.

13. He concluded his correspondence that the Council had acted in a proper manner and taken their views into account but, if they were dissatisfied, they had the right to pursue their complaint further with referral to the Ombudsman. The formal response to the Complainants from Officer 2 did not refer to the hedge (see paragraph 10) but in subsequent correspondence he gave advice that any issue over the boundary and rights to title was a matter of legal challenge between the parties and not a matter for the planning authority.

14. Further correspondence ensued with Officer 2, as Mr and Mrs C sought more clarification and information. In his correspondence with them, Officer 2 not only maintained his view that the application had been processed properly - and that adequate information had been given to the Committee on the description of the development – he also commented that the Council did not consider that the decking had a significant impact on adjoining properties.

15. Work proceeded on site and the Complainants corresponded with the Council on additional issues which arose, relating to their concerns about work on the garage and the surface water drainage system.

16. In Mr C's formal complaint to the Ombudsman on behalf of himself and his wife, he explained that he was unhappy with the outcome of the Council's investigation in respect of his complaint. He remained dissatisfied and did not

accept the Council's explanation that the decision to grant planning consent was taken properly, because he believed that the planning report failed to describe correctly what was proposed, which had misled the Committee. He said that this had been confirmed by the Chair of the Committee, who had commented to him that she had not appreciated that there was a two storey extension going up at the rear of the existing property. He complained also that he was not notified in advance of Application A being considered by the Committee.

17. Further, Mr C complained that the Committee members were unaware of the 'massive construction work' which had already taken place because the report was silent on this. Moreover that, although the Council's formal responses had indicated that Officer 1 was aware of the work on site before planning consent was sought, this was contrary to what Officer 1 told Mr C and his co-complainants when they met with him. Mr C sought revocation of the planning consent and removal of the surface water drainage pipe, which he stated had been laid in the wrong place and contravened the terms of the planning consent.

18. Subsequent to making his formal complaint, Mr C informed me that he had received advice from the Council that they were satisfied that the surface water drainage plan which had been submitted to them was an acceptable proposal, which met the terms and conditions of the planning permission. Mr C commented that to allow the retention of an obtrusive and ugly pipe in a location where it could not be maintained (ie, without obtaining his consent to access his land) was totally unacceptable to him.

19. I informed Mr and Mrs C that their complaint would be investigated. However, I explained to them that the Ombudsman did not have the power to have the planning permission revoked. Before my investigation commenced, a new planning application was submitted to the Council (Application B) which proposed changes to the House. A complaint was also made to the Ombudsman from Mr and Mrs D who had been complaining to the Council about similar things at the same time as Mr and Mrs C. Their complaint to the Ombudsman mirrored the concerns of Mr and Mrs C but raised a fresh issue about the Council's handling of their correspondence. I decided to include in the investigation the Council's handling of both planning applications; to consider the Complainants' allegations of shortcoming because of a failure to ensure the accuracy and content of the planning report (Application A); and whether the process to determine both applications complied with Council policy

and procedures. Further, I decided to look at Mr and Mrs D's specific complaint about how their representations were dealt with by the Council and whether there was evidence of fault in how these were handled.

**(a) The Council mishandled the planning proposals relating to the extension of a residential property; and (b) The Council failed to deal properly with Mr and Mrs D's representations about these proposals**

20. Although he had submitted a formal complaint to the Ombudsman, Mr C continued his correspondence with the Council on issues relating to work taking place on site. He had been informed, in correspondence in December 2007 with Officer 2, that Officer 1 intended to visit the site and meet with the applicant to discuss the issues raised by Mr C about the finish of the base wall for the garage (and run-in) and the guttering and surface water drainage, with a view to resolving these matters. As he did not hear anything further, Mr C wrote to Officer 2 on 16 February 2008 asking if the meeting had taken place and the conclusion reached. By letter of 5 March 2008, Mr C was informed by Officer 1 that the applicant's proposal on the collection of surface water (including roof drainage) was considered acceptable and he was provided with a copy of the plan.

21. The other issues raised by Mr C were not dealt with in Officer 1's letter and Mr C corresponded further with Officer 2. Mr C emphasised that the works relating to the drainage and base for the garage took place before planning permission was sought and did not have the benefit of Committee approval; and he complained again about maintenance of the pipe and the problems which he said had arisen from the work to date (base wall) and would arise during the construction of the proposed garage. Moreover, he continued to maintain in correspondence with the Council that the garage which had been granted consent would, if built as planned, encroach on to his property.

22. Work on the main part of the site commenced in the late spring of 2008.

23. In June 2008, Mr C contacted the Chair of the Committee (the Chair) complaining that his objections had not been considered correctly and outlining the effects the building work on the House was having on his and his co-complainants' amenity, in particular the planned decking. In a covering letter to me he stated that, although it had been described on the plans and the Committee report as decking, it was clear from the construction work which had been completed that the height of the decking made it more like a balcony and

that it was going to be very obtrusive, giving commanding views into the Complainants' respective properties.

24. A series of meetings took place on site between the Chair, Council officers and the Complainants. As stated in paragraph 1, in July 2008, the applicant submitted Application B to the Council seeking amendments to the original planning permission, including an increase in the area of the first floor rear balcony and the installation of French doors as an alternative to windows at the rear elevation. However, taking account of the Complainants' concerns, the Council decided that the ground floor decking was causing a problem of overlooking for neighbours on either side and, following discussion with the applicant's agent, asked for an amendment to the plans: to lower the decking height and to re-position the garage wall (to ensure the minimum distance was maintained); and to re-position the surface water drainage pipe from the side to the rear. A request was made also for work on site to stop until the matters were resolved with a determination of Application B.

25. The Complainants had an opportunity to make representations on the amended Application B. They were notified of the date the Committee would meet and that they had an opportunity to attend and observe the discussion. They were also advised that the report was available to view on the Council's website. The recommendation was to grant planning consent, subject to conditions. However, the Committee decided after a site visit to grant permission for only some elements of Application B, subject to conditions. Planning permission was refused for the enlargement of the balcony at first floor level on the grounds of 'loss of privacy and amenity to the neighbouring properties, over-development and as the extended balcony would be an over-dominant feature and out-of-character with the neighbouring properties and detract from the appearance of the property and the wider area'.

26. When I met with the Complainants, I asked them whether the actions taken latterly had resolved any of their complaints. Mr and Mrs C concurred that there had been some improvement (for example, the Committee had decided that the surface water drainage pipe had to be moved, see paragraph 24). However, the Complainants' dissatisfaction jointly over what was being built and loss of privacy, which they had objected to from the start, had not been resolved. They compared the Council's handling of Application A with Application B and commented that the advice with Application B was clearer and better and they had been given the opportunity to attend the



Committee meeting. However, they remained concerned about some issues, such as the removal of boundary hedges, which the Complainants stated had not been addressed by the Council. Also, they complained that the Council had not responded to their planning consultant's detailed report (see paragraph 48) which they had recently commissioned, the contents of which they considered provided support to their complaint about Council shortcomings in the handling of the matter.

27. As an overview, the Complainants said that they felt that the Council had acted with partiality towards the applicant and failed to respond to their complaints; particularly in the early stages, when they sought advice about the removal without their consent of mutual hedges and the preparatory works which were being carried out on the site. Mr and Mrs C commented that it had taken more than a year from their first complaint before someone from the Planning Department visited them on site.

28. With regard to their dissatisfaction with the handling of their correspondence with the Council, Mr and Mrs D stated that there was delay and failure to respond to their letters. They considered that the Council had consistently ignored them and that the points they made in their letters were not answered.

29. At interview, Officer 1 commented that, in accordance with standard Council practice, he visited the site in July 2007, at which time no work was taking place. He assessed the proposal and how it fitted in with the surrounding area. In commenting on the Complainants' representations on Application A (see paragraph 6) and their dissatisfaction with his report to the Committee, Officer 1 stated that he had noted their view that the extension would breach the rear building line but the convention was that the building line is to the front of a street not the rear. On their dissatisfaction with the lack of detailed cross-section plans (to show that the site sloped sharply), Officer 1 commented that such detail is not required by the Planning Department for this type of development. It tended to be a consideration only where, for example, a major housing development was planned and the land had variable levels. He had no experience of cross-sections being a requisite for this type of development and added that there was no guidance under planning law which would require this. He was satisfied that the plans were suitable, as they showed the side elevation and under-build.

30. With regard to the Complainants' comment that no consideration was given in the assessment of Application A to planning issues such as overlooking (privacy) or Mr and Mrs D's objection that the extension overshadowed their patio area and a large section of their garden, Officer 1 stated that the Council do not have a daylight policy but that they can use indicators if they need to do a more accurate assessment. In his experience, these were rarely used. However, he confirmed that he had looked at how the extension on the north side would affect Mr and Mrs D's property and, following on from his visit and in recognition that the windows planned on this wall could affect their privacy, he secured a change to the proposals which removed the windows on the gable from the plans.

31. On the Complainants' concern that unauthorised work took place on site and their complaint that Officer 1's report on Application A erroneously failed to detail this, Officer 1 commented that 'unauthorised work' is not necessarily illegal and work undertaken pre-application for planning consent and building warrant could be permitted development (that is, not requiring planning consent). He commented that this issue was not brought to his attention by the enforcement officer but when he visited the site, it was obvious that the base for the garage had been formed by infilling. He stated that it would not have made a difference to his recommendation if he had known about a colleague's investigation of a complaint about work taking place on site (see paragraph 10) because he was of the view that, with or without infill, the base of the garage and driveway to be formed did not require planning permission.

32. In response to being asked why the Complainants were not re-notified when the plans were amended (to allow them an opportunity to comment on the proposed changes to Application A), Officer 1 stated that he considered that the issues relating to planning matters about which the Complainants made representations had been addressed through the amendments made by the applicant. He could have asked the applicant to carry out re-notification but it was a judgement call and timing (as in the timescale the Council have for coming to a decision on an application) was an element in his decision not to require re-notification. He believed that the changes which he had asked to be made to the plans addressed the issues of privacy and overlooking which had been raised by the Complainants. He accepted that the Complainants would have liked the opportunity to see the amended plans but he considered that there would be no added value from re-notification.

33. We discussed the content of the standard letter, which informed the Complainants that the application was on hold, and whether it should be revised to give more information about the process. In particular, the Complainants had stated that it gave the impression that they would be notified once the application was mature and before it went to the Committee but in the event this had not happened. Officer 1 stated that he would take this suggestion back to his department to consider.

34. Officer 1 commented that, after the Committee had granted planning consent for Application A, he visited the site in June 2008 with his manager (the Manager of the Development Management Section – Officer 3) to investigate the Complainants' complaints about the decking and the dominance of the building compared to the surrounding buildings. He added that, with the submission of Application B in July 2008, the opportunity was taken by the Council to alleviate the Complainants' concerns about the decking, as it was clear that this was more dominant than it appeared from the original plans. Officer 1 stated that, whilst it was not usual once planning permission had been granted to negotiate with an applicant on a condition of planning consent, the submission of Application B by the applicant gave the Council the opportunity to do so and to address this issue. He acknowledged that the report to the Committee on Application B was more detailed than on Application A and stated that this was because there were more points in the objections made. Also, he wanted to show that it had been fully considered. When I asked why the original report could not have been prepared with as much detail, Officer 1 commented that it would be neither possible nor beneficial to produce such detailed reports in every case. Officer 1 provided me with copies of reports on proposals for similar types of development to show that the style and detail in these reports compared with his report on Application A. (I noted that where decking was proposed, there was a detailed assessment (and under-build) and that reference was made to the Development Control Statement in the assessment which was carried out on other planning factors, such as daylight and privacy on neighbouring properties.)

35. When I interviewed Officer 3, he described his first involvement with the case as seeing the report on Application A at committee stage and before it went to the Planning Services Manager, who is his manager (this does not accord with the recollection of the Chair of the Committee – see paragraph 43). He considered the report to be satisfactory, in that it was well presented and dealt with the representations which were made. In commenting on the

complaint that the report failed to describe properly the development proposal, Officer 3 stated that it was correctly described as a two storey extension. He explained that he became involved in the case later when he was asked by Officer 2 to meet with the Complainants, at which time the development was under construction and he could see what was being built.

36. On being asked his view about the two issues raised by Mr C prior to planning consent being granted – removal of the boundary hedge and boundary encroachment – Officer 3 commented that planning permission was not required to remove a hedge as they were not protected and that boundaries were not planning issues but matters for legal resolution. He confirmed that works which were carried out before Application A was submitted would normally be reported and that Committee members would expect to see some reference to this in the description section of the report. However, he added that, although it would have been relevant to say work had started on site, members did have photographs of the site so would have seen what work had been undertaken. He did not, therefore, regard this issue as having influenced members, who were supportive of the proposal.

37. On the assessment of Application A, Officer 3 commented that he did not consider that the decking was a privacy issue because there was already significant overlooking from the House in relation to Mr and Mrs C's property. Similarly, while privacy was an issue on Mr and Mrs D's side – and the erection of decking did not help – there were already privacy issues when the properties were built. He commented that he did not believe that the Council needed a policy on measuring sunlight/privacy because there were already criteria for testing this which planning officers were required to consider (the Building Research Establishment Report of 1991 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice'). He subsequently provided a drawing (dated 21 March 2008) to show that there had been an assessment of the site and commented that it was evident from this that, whilst on the day it was drawn there would be an increase in the shadow cast in the morning over part of Mr and Mrs D's garden, such a shadow cast would neither be significant in the context of the whole day nor of the entire garden. However, the drawing was done some time after Application A was granted planning consent.

38. Officer 3 confirmed Officer 1's comments that Council procedures did not require cross-sectional drawings on this type of development. He commented that the drawings adequately showed the elevations involved. Overall, Officer 3

considered that the planning report on Application A dealt with the salient points but stated that, for Application B, more care and attention was given in compiling the report.

39. Officer 2 has responsibility for all planning functions of the Council. The Council's complaint process is in three stages and he was the last stage. At interview, Officer 2 explained that he first became involved in September 2007 with Mr and Mrs C's complaint but dealt with representations from both sets of complainants. His investigation involved obtaining a report from the officers concerned. In this case, he also visited the site but only viewed it from the road.

40. We discussed Mr and Mrs D's dissatisfaction with the handling of their correspondence. Officer 2 stated that he had checked and counted 24 letters from Mr and Mrs D and their representatives and noted that he answered every letter, bar two, but a composite response was sent in those two cases. He considered that he had spent a reasonable amount of time dealing with the matter. He considered also that full information was available to the Committee to come to a decision. He stated that the Council would pursue enforcement action if work had been carried out on the House without planning consent.

41. I asked him if there were any lessons to be learned by the Council from this complaint and he commented that the standard of correspondence could be improved and it would be worthwhile taking a little longer and providing more detailed advice when writing out to inform representatives about the Committee's decision.

42. I interviewed the Chair and Vice Chair of the Committee (the Chair and Vice Chair) together, to obtain their views on how Application A was reported and to ascertain the extent of any further involvement they had in the matter, following the complaints to the Council which were made by the Complainants.

43. The Chair commented that she was first approached by Mr and Mrs C in August 2007, before Application A went to the Committee, when they raised their concerns with her about the scale of the building. She spoke with Officer 3 who checked the site and assured her that it was on a large site.

44. When asked to comment on the detail in the planning report on Application A and the Complainants' assertion that this was misleading, the Chair commented that, in her view, the report did not describe the extension properly

(she was not aware that it was protruding so far to the rear of the property or the height of the decking) and the photographs did not put the House size in context. Also, that it was not clear that the House was being extended to the rear.

45. When I asked for her reaction to the development, she said that when the Complainants got in contact with her in June 2008 (when building was underway) and she visited, she was 'horrified' by the scale of the building. She had been unaware of the degree to which the site sloped and, with hindsight, considered that it would have been beneficial if the members had carried out a site visit. She met with Officer 2 and Officer 3 on 30 June 2008 and spoke to them about her concerns. Their view was that, as planning consent had been granted, there was nothing that could be done. However, Officer 3 had agreed to speak to the applicant. The Chair stated that she believed that, if the Committee members had seen the site before the application was decided, the proposal would not have been approved.

46. The Vice Chair commented that she had never come across a situation as bad as this. However, although the Committee members were not informed of the effect of the gradient on the neighbouring properties, she did not see this as a fault in the presentation by planners, rather that perhaps the Committee did not look at the proposal thoroughly enough. She considered that the Committee members were presented with all the information they required to make a decision. It was more a matter of interpretation and a failure by Committee members to recognise the salient points made by the objectors to the application.

47. Both the Chair and Vice Chair agreed that the report on Application A was in standard format and that the current process for determining planning applications was good. In summarising the situation, both commented that it was a 'rare' situation where, with hindsight in this particular case, it would have been beneficial to see a report with more detail about the scale of the property and its proximity to neighbouring properties. The further application (Application B) gave the Committee an opportunity to mitigate the damage done as much as possible. However, they did not consider that there were any particular lessons to be learned from this case. Ideally, it would be helpful to visit every site but it was not practical or proportionate to do so.

### *Planning Consultant's Report*

48. In July 2008, the Complainants commissioned a report from a planning consultant (the Consultant) with the brief to establish if the Council had followed due process in respect of the planning applications to extend the House; to consider the approval granted; and to give a view on what steps needed to be taken, if any, to rectify the matter. After investigation, the Consultant concluded that there had been failings in the process because the planning authority did not require re-notification with the submission of the amended plans for the first application or insist upon cross-sectional drawings. Some of his criticisms related to the report to the Committee: failure to advise the Committee of the extent, nature and height of the proposed decking, despite the issue being highlighted in the submitted objections; failure to assess properly the impact of the development on the adjoining properties with respect to loss of privacy, sunlight, amenity and mass; and failure to advise the Committee of the works which had taken place prior to the submission of the application. He recommended that all parties were notified of Application B and any further amendments; detailed cross-sectional drawings of the site and development should be submitted to the Council to show accurately the relationship of the proposed development to the Complainants' properties; the applicant should be informed to stop work on site; the Committee should undertake a site visit before making any further decisions on development proposals affecting the property; and, finally, that as it appeared that the original application was granted permission on the basis of inaccurate/flawed information, the Council should re-consider the position with regard to that consent, with a view to revoking the planning permission.

### *The Adviser*

49. The Adviser noted that the report to the Committee on Application A did not deal with the question of work starting on site early or the reasons why enforcement action had not been taken: for example, that the work at the time accorded with the application and, if consent were granted, the situation would be regularised, or because it was permitted development and did not require to be the subject of planning consent. He came to the conclusion that it would have been more transparent to have included the facts with regard to the advance works in the report, especially where the objectors had made mention of them.

50. On the effects on the Complainants' privacy, the Adviser noted that the report to the Committee on Application A dealt with the separation distances

from the boundary at the foot of the garden with opposing properties rather than the Complainants' properties. Mr and Mrs D's representations about their privacy being affected from overlooking windows were noted as being dealt with by the amendments to Application A, as was the overlooking into Mr and Mrs C's property. However, he noted that there was no reference to the Council's policy or the guidelines used to assess daylighting and sunlight impacts of the development. Further, he noted that although reference was made to the Council's Development Control Statement, there was no detailed supplementary guidance published by the Council on the design of alterations and extensions to residential property and no indication was given of the actual basis on which the impact on privacy was assessed. The Adviser was concerned also that the approved plans did not indicate the relationship with adjoining property nor convey any information about ground levels.

51. The Adviser went on to comment that it was clear there was no assessment on the overlooking effects of the raised decking on the Complainants' properties and that the lack of any assessment of the impact of the decking in the report to the Committee was a major omission which did not permit the Committee, as decision makers, to make a properly informed decision. He noted that, although the Committee may not have come to a different view, with this information it should have been possible to secure the applicant's aims with an amended scheme, while protecting the residential amenity of the area to a far greater degree.

*(a) Conclusion*

52. The Complainants' engagement in the planning system, as members of the public with a notifiable interest, who wished to make representations about their neighbour's proposal to extend his house, has not been a happy experience. They took the opportunity to make representations, with the expectation that their views would be considered and reported on. It was their expectation also that the application would be assessed properly by the planning authority.

53. Mr and Mrs C were first alerted to work on site with the removal of the boundary hedge and the infill of ground conterminous to the boundary. They raised this formally with the Council with their representations on Application A and were dissatisfied, both that it was not reported to the Committee that work had commenced on site in advance of planning consent and because the



Council failed to respond to their repeated questions, subsequently, about what action could be taken to protect the remaining hedge.

54. Before Application A was submitted, the Council had followed up the complaints about the work which had been undertaken on site and decided that no formal action was required because they were told that an application was being made for planning consent. Starting work in advance of consent is not an offence under planning law, if it does not require planning permission (being either not development requiring any form of planning consent, express or deemed, or permitted development automatically granted by the General Permitted Development Order) or, if it does require planning permission, it subsequently receives consent and does not continue as unauthorised. However, I am concerned that it was not included in the report to the Committee, having received advice from a Council planning officer that there would normally be a description of the works in the report. The advice I received from the Adviser was that it would have been more transparent to have included the facts with regard to the advance works and any issues over the boundary in the report on Application A, especially where this formed part of the representations made by the Complainants. Scottish Planning Policies (SPPs) suggest that Councils should be consistent in their approach. The written and oral evidence I have obtained from the Council suggests that this was not the case here.

55. Turning to the original notification, although I can understand that, because the Complainants were informed that Application A had not been registered and this might have led them to expect to receive further advice from the Council on registration and about the date it was going to the Committee, the advice they received was standard. On this basis, I have found no fault in the notification they were given. However, the Council may wish to consider whether the letter which is sent to those who make representations is appropriate and whether it could be improved to give clearer advice.

56. With regard to the assessment of the proposal and report prepared for the Committee on Application A, the advice I have received is that this was flawed in the omission of relevant information and because it lacked evidence that the assessment undertaken was carried out properly and fully. I have been informed by the Council that it is not their practice to ask for cross-sectional drawings for this type of development. However, I have seen examples in other planning reports in respect of planning applications where it is proposed to

extend a dwellinghouse and, where decking is proposed, there is a detailed assessment and it is confirmed that an assessment has been carried out under the Development Control Statement on other planning factors, such as daylight and privacy on neighbouring properties.

57. I also have concerns, based on the advice I have received, that the Council did not ask for plans which showed the relationship of the House with adjoining properties and that there was no information about ground levels. Given the nature of the site with its sloping ground levels and given that the proposal included decking, the lack of any assessment in the report on the ground level and the impact of the decking on neighbouring properties was an omission and denied the Committee the opportunity to make a properly informed decision. In all the circumstances, I uphold the complaint that the Council mishandled the proposals relating to the extension to a residential property.

58. The complaint has moved on, with the submission of Application B and the Council have taken the opportunity, with its submission, to try to address, retrospectively, some of the issues raised by the Complainants and their Consultant. However, this has not fully resolved the complaint and, in the interim, the Complainants have expended a considerable amount of time and money trying to protect their amenity. Given the Complainants' concerns about the lack of a proper assessment of the proposal and report prepared on Application A and the advice I have received that this in fact was the case, I can understand why the Complainants sought independent advice. Taking account of this, the Ombudsman, therefore, has the following recommendations to make.

*(a) Recommendations*

59. The Ombudsman recommends that the Council:

- (i) review their procedures to ensure that these contain clear advice on reporting to the Committee where premature works have been carried out, whether or not these form part of the representations to a development proposal;
- (ii) formally apologise to Mr and Mrs C and Mr and Mrs D for the shortcomings identified in this report; and
- (iii) make a payment of £500 to Mr and Mrs C and also to Mr and Mrs D towards their expenses.

*(b) Conclusion*

60. Mr and Mrs D alleged that the Council had failed to deal properly with their representations about these proposals and I have assessed the file of correspondence which they provided. While there has been a considerable exchange of correspondence, particularly in 2008, I have not seen evidence of any particular delay or failure to respond to letters. It is clear that the information provided by the Council was not, in some instances, accepted as being correct and this led to further correspondence, when Mr and Mrs D and their agents sought clarification and the replies were sometimes composite (see paragraph 40). While I can appreciate Mr and Mrs D's concerns, I did not find that there was any significant shortcoming in the way that their correspondence was handled by the Council, with regard to the timescales or a failure to respond. Although I have not upheld the complaint because there is no evidence of substantive fault by the Council in the handling of correspondence, in recognition that there were occasions when the Complainants had to reiterate their query because the reply did not fully address their representations, the Ombudsman recommends that the Council should examine and consider improvements in how they handle correspondence in any ongoing service review.

*(b) Recommendation*

61. The Ombudsman recommends that the Council examine and consider improvements in how they handle correspondence in any ongoing service review.

62. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify him when the recommendations have been implemented.

**Explanation of abbreviations used**

Mr and Mrs C, and Mr and Mrs D	The Complainants
The Committee	Planning Committee
The House	Applicant's residential property
Officer 1	Planning Officer
Officer 2	Assistant Chief Executive
Officer 3	Planning Manager
The Chair	Chair of the Planning Committee
The Vice Chair	Vice-Chair of the Planning Committee
The Consultant	Planning Consultant contracted by the Complainants
The Adviser	Ombudsman's Planning Adviser
Application A	Planning application for a two storey extension to a residential property
Application B	A further planning application seeking amendments to the original planning permission granted for an extension to a residential property