

## Scottish Parliament Region: Central Scotland

### Case 200701640: South Lanarkshire Council

#### Summary of Investigation

##### **Category**

Local government: Handling of planning application (complaints by opponents)

##### **Overview**

The complainants (Mr and Mrs C), raised a number of issues relating to South Lanarkshire Council (the Council)'s handling of a planning application for the formation of a first floor extension above an existing garage and the erection of a one and a half storey extension to the rear of a neighbouring property.

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

The complaints which have been investigated are that the Council:

- (a) failed to consider properly objections relevant to the application (*not upheld*);
- (b) included misleading and incorrect information in their report to the planning committee (*not upheld*);
- (c) granted planning permission against relevant planning policies (*not upheld*);
- (d) failed to apply Building Research Establishment guidance properly in relation to sunlight (*not upheld*);
- (e) failed to calculate correctly sunlight availability in relation to Mr and Mrs C's property (*not upheld*);
- (f) failed to allow Mr C to give personal statements to the planning committee (*not upheld*); and
- (g) failed to handle Mr and Mrs C's formal complaint in line with the Council's complaints procedure (*not upheld*).

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

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. The complainants (Mr and Mrs C) were concerned about South Lanarkshire Council (the Council)'s handling of a planning application for the formation of a first floor extension above an existing garage and the erection of a one and a half storey extension to the rear of a neighbouring property. Mr and Mrs C raised a number of issues surrounding the planning application.

2. The complaints from Mr and Mrs C which I have investigated are that the Council:

- (a) failed to consider properly objections relevant to the application;
- (b) included misleading and incorrect information in their report to the planning committee;
- (c) granted planning permission against relevant planning policies;
- (d) failed to apply Building Research Establishment (BRE) guidance properly in relation to sunlight;
- (e) failed to calculate correctly sunlight availability in relation to Mr and Mrs C's property;
- (f) failed to allow Mr C to give personal statements to the planning committee; and
- (g) failed to handle Mr and Mrs C's formal complaint in line with the Council's complaints procedure.

### *Background*

3. The planning application was registered on 27 February 2007. A request for information in connection with the application was received from Mr and Mrs C on 16 April 2007. This was responded to on 26 April 2007, following which detailed objections to the application were submitted by Mr and Mrs C. Following the submission of the objections a number of meetings were held with Mr and Mrs C. In addition, a number of site visits were undertaken with Mr and Mrs C. The Council explained to me that this was to allow Mr and Mrs C the opportunity to illustrate the points made in their objections. Approximately nine meetings were held with Mr and Mrs C in relation to their continuing concerns about the extension, in particular, in relation to their concerns about the loss of sunlight and overshadowing. There was also a considerable amount of correspondence between Mr and Mrs C and the Council in relation to their concerns about the application. Despite this, Mr and Mrs C remained dissatisfied with the Council's handling of the matter. The application was

considered and granted by the East Kilbride Area Committee (the Committee) on 29 August 2007.

### **Investigation**

4. The investigation of this complaint involved obtaining and reading all the relevant documentation, including the numerous correspondence between Mr and Mrs C and the Council. I have considered the relevant planning report prepared by the Executive Director, Enterprise Resources in respect of the planning application which was presented to the Committee on 29 August 2007. I have also had regard to the relevant guidance and planning policies. I also sought the advice of a planning adviser (the Adviser). I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the Council were given the opportunity to comment on a draft of this report.

5. It was clear from the extensive correspondence between Mr and Mrs C and the Council, in relation to the planning application, how strongly they had felt about the proposed development, in particular, their concern about the possible loss of sunlight and overshadowing. I accepted that Mr and Mrs C believed that the proposed extension would adversely affect their amenity and that they had clearly explained their reasons for their position on the matter, including why they maintained that the calculations used by the Council to assess the availability of sunlight were inaccurate. However, it is not my role to question professional judgement or assess technical aspects of planning applications, unless I see evidence of maladministration or service failure in the planning process. As a result, my investigation has focussed on whether the Council, in considering the application and Mr and Mrs C's objections, acted properly and applied their normal processes and procedures.

**(a) The Council failed to consider properly objections relevant to the application; (b) The Council included misleading and incorrect information in their report to the planning committee; (c) The Council granted planning permission against relevant planning policies; and (d) The Council failed to apply BRE guidance properly in relation to sunlight**

6. In their letter of complaint to the Ombudsman's office Mr and Mrs C stated that the Council had failed to properly consider their objections against the planning application. To demonstrate their position on this matter they stated that the developer had been asked for revised plans before the Council had an

opportunity to consider their objections to the proposed extension. Also that the developer had been advised that the amended proposals submitted for the extension were acceptable in planning terms before their objections had been considered.

7. In responding to my enquiries, the Council explained that following receipt of the application and, in line with normal procedures, the application was assessed in terms of the Council's policies. The applicant was requested by the planning officer dealing with the application to make changes to the proposal which he considered would improve the proposal, reduce its impact on neighbouring properties and meet the terms of policy DM4 – House Extensions and Alterations. Following receipt of the requested changes, the planning officer confirmed to the applicants that, in his view, the proposal was acceptable in terms of the relevant development control policies. However, the Council confirmed that during this time objections submitted, including Mr and Mrs C's objections, were still being considered. I am satisfied that the correspondence and the number of meetings held with Mr and Mrs C during this period confirmed the Council's position on this matter. The Council further explained that if, during consideration of objections received, a valid objection in planning terms was raised, which after consideration meant that further amendments were necessary, this would have happened.

8. In addition, the Council explained that although there is a statutory period of 14 days for making representations they allow 21 days for objections. In most cases at the end of the 21 days a recommendation would be made, however, in this case, a much longer period of time lapsed to enable the planning service to fully investigate and understand Mr and Mrs C's objections. These investigations included carrying out revised daylight/sunlight calculations at Mr and Mrs C's request (although the application was initially received on 27 February 2007 it was not considered by the Committee until 29 August 2007). As indicated above, an aspect of Mr and Mrs C's complaint related to the daylight/sunlight calculations undertaken by the Council and I will address this matter below (see paragraph 16).

9. Mr and Mrs C stated that they believed that there were inaccuracies in the planning report, that the Council had failed to use the BRE guidance properly, that the decision to grant planning consent went against policy DM4, and that a number of their objections had not been adequately covered in the planning report. The Council confirmed that they did not accept that there were any

inaccuracies in the planning report submitted to the Committee nor did they accept Mr and Mrs C's contention that they had, in the planning report, misquoted or misused the BRE guidance. The Council explained that planning officials had used the BRE guidance to help assess the proposed extension, but that these were not prescriptive standards or statutory requirements and that the guidelines were considered as part of a wider assessment of the proposal. Therefore, there was a degree of professional judgement required in arriving at the recommendation on the planning application.

10. Further, the Council had not accepted that the BRE guidance had been used selectively and accepted that during the winter months direct sunlight would be lost to Mr and Mrs C's patio doors. They have explained to me that the BRE guidance stated that ideally 5% of sunlight should be available in winter months. Without the proposed extension Mr and Mrs C's property received 4% of winter sun which would be lost due to the extension. However, the planning report considered by the Committee advised elected members that planning officers' professional view was that the level of additional loss of sunlight/overshadowing that may be experienced would not significantly worsen the present situation and that it was considered that it would be unreasonable to refuse the application on this basis. The proposal was, therefore, considered acceptable and complied with local plan policy.

11. The Council accepted that the planning report had not made specific reference to any impact on Mr and Mrs C's patio and garden ground, but that this had been broadly considered during the assessment of the application and had been discussed on site with Mr and Mrs C. (In fact Mr and Mrs C indicated that the matter had been discussed with them on site but that it had not been covered in the planning report.) The Council confirmed that the planning officers' professional view was that the impact of the proposed extension was not considered to be significant. The guidance notes associated with policy DM4 stated that 'the extension should not result in significant loss of daylight/sunlight to neighbouring houses or garden ground nor cause overshadowing detrimental to the amenity of those adjacent properties'. The Council confirmed that they were satisfied that the proposed extension was not contrary to policy DM4 in this respect. The reasons for this were detailed in the planning report.

12. The planning report had also indicated that the proposal had been considered in terms of the relevant policies of the Adopted East Kilbride and

District Local Plan (the Adopted Local Plan) and the Finalised South Lanarkshire Local Plan (as modified) (the Finalised Local Plan). In particular, in relation to policies DC1 and SLP6 of the Adopted Local Plan, which provided for the protection of privacy and sought to avoid development that would result in significant overlooking of adjacent properties, the report had indicated that no overlooking or loss of privacy would be experienced by neighbouring properties and that the proposal complied with policies DC1 and SLP6.

13. Mr and Mrs C had expressed concern that the report had incorrectly stated that one of the doors of the proposed extension would look directly onto the solid gable end wall of their property. The Council explained that in assessing 'overlooking', their Residential Development Guide stated that there should be no directly facing windows within 20 metres of each other. While the Committee report highlighted that the proposed back door did not face any windows but faced onto the gable of the house which was solid and not directly facing into any windows, the Committee had fully debated that, although the door was in fact offset from the gable, it did not directly face the windows of Mr and Mrs C's property and, therefore, did not create an overlooking issue.

*(a)(b)(c) and (d) Conclusion*

14. Having carefully considered the planning report I am satisfied that the report reasonably summarised the objections submitted, including those submitted by Mr and Mrs C. I am also aware that the letters of objection received were made available to elected members. I understand that Mr and Mrs C disagree with the Council's decision to grant planning consent, however, I am satisfied that the evidence shows that full consideration was given to the objections raised by Mr and Mrs C. I have seen no evidence of failure on the part of the Council in their dealing with the planning application. I am satisfied that the application was processed properly in accordance with the Council's planning policy and procedure, and that all relevant factors were taken into account by the Council before they made the award of planning permission. I am satisfied that Council officers have endeavoured to explain the reasons why they did not consider that there were planning grounds to refuse the planning application.

15. In all the circumstances, although I recognise Mr and Mrs C's strong feelings in this matter, I conclude that the Council acted reasonably. I do not consider that there was maladministration and I do not uphold these aspects of the complaint.

**(e) The Council failed to calculate correctly sunlight availability in relation to Mr and Mrs C's property**

16. A substantial part of Mr and Mrs C's complaint related to their continuing contention that the Council had failed to calculate correctly sunlight availability in relation to their property. It was clear that Mr C remained dissatisfied with the calculations undertaken by the Council and that he had requested that further calculations be undertaken, taking into account additional buildings and features. Mr C believed that these additional calculations subsequently demonstrated that his amenity would be more severely affected than indicated in the calculations initially carried out by the Council. It was also clear from the extensive correspondence on this issue how strongly Mr and Mrs C felt about this matter and I recognised the effort undertaken by Mr C to demonstrate that his amenity would be compromised by a substantial loss of sunlight and daylight.

17. However, I am satisfied from the available background documents that the Council responded to Mr and Mrs C's representations on this matter and attempted to explain to Mr and Mrs C the process carried out by them to assess the potential overshadowing in this case. The Council explained that the calculations on sunlight availability were carried out as described in the BRE guidance as well as the Council's various templates and calculations. The BRE test was recognised guidance within local planning authorities in the UK.

18. The process consisted of calculating the estimated loss of sunlight that would be experienced at Mr and Mrs C's property should the extension be granted planning consent. This was done through charting the heights of adjacent buildings against the distance they sat from the reference point on Mr and Mrs C's property. These figures were then plotted on a direction finder and could be used in conjunction with templates from the BRE book. The Council, in responding to my enquiries on this matter explained that, in line with normal practice, they had initially based the calculations on Mr and Mrs C's property and the application site property (the building that was being altered and the house Mr and Mrs C claimed would be affected). However, a number of meetings were held between the planning service and Mr and Mrs C and at each of the meetings, Mr and Mrs C had requested that further buildings adjacent to the applicant's property, and their property, be included in the calculations as they believed that those buildings currently impacted on their daylight and sunlight. The planning service carried out these further

calculations. The Council have confirmed that, while they accepted that Mr and Mrs C remained dissatisfied with the outcome of the additional calculations, they had only served to further illustrate that the impact of the proposed extension was not unacceptable in planning terms. The Adviser pointed out that it was the statutory duty of a planning authority to determine a planning application in light of the development plan unless material considerations indicated otherwise. Both the development plan and those considerations which have been identified by the courts to be material to planning deal with the wider public interest in development and not the protection of private interests.

19. The Council further explained that the final template, on which the planning report considered by the Committee had been based, had been overlaid onto the template provided by Mr C and had been found to be the same. The Council's calculations were achieved by overlaying the templates onto BRE guidance and the differences between the Council's calculations and Mr C's were based on the existing situation and were considered by the Council to be minimal.

20. The Adviser indicated that the BRE guidance notes and development plan policies such as the Council's DM4 were generally intended as guidance, not as mandatory standards. The BRE guidance stated that it should be applied sensibly and flexibly. While the Council's Guidance Notes on House Extensions and Alterations accompanying policy DM4 in the written statement did not appear to state so in as many words, other authorities made it clear that such standards were for guidance only and were not intended to be mandatory. The DM4 policy itself was couched in general terms – 'House extensions and alterations will be permitted where it can be demonstrated that the proposal complies with the following criteria ... [inter alia] ... it does not significantly adversely affect adjacent properties in terms of overlooking or loss of privacy, daylight or sunlight'. The Adviser indicated that it was for the planning authority to make a judgement on how far the standards in the subsequent guidance notes to DM4 could be achieved without unreasonably preventing the property owner from extending their property. In doing so, however, he advised that they must indicate clearly (in the planning officer's report for example) that they have given consideration to any representations they may have received with regard to such matters as sunlight and daylight issues insofar as they might be material to a planning decision on the case.

*(e) Conclusion*

21. I am satisfied from the available evidence that the Council have responded to Mr C's concerns about the calculations undertaken by them and that at his request they have carried out further calculations in an effort to address his concerns about the accuracy of the calculations. It is clear that Mr C maintains that the further calculations were necessary due to errors in the initial calculations and that he maintains his position that the calculations used in the final planning report are still inaccurate. However, it is equally clear that the Council are satisfied that the templates were used correctly to calculate the existing and proposed (with extension) daylight and sunlight figures and that the calculations were correct. This is a matter of judgement for the planning authority to make within its competence under the Planning Acts which, in the absence of evidence of administrative/procedural fault, I am unable to challenge. I am satisfied that the Council have addressed Mr C's representations on this matter and have clarified the calculations undertaken by them and the reasons why they consider the application to be acceptable in planning terms. In these circumstances, I do not uphold the complaint.

**(f) The Council failed to allow Mr C to give personal statements to the planning committee**

22. As part of the complaint to the Ombudsman's office, Mr C had indicated that he was dissatisfied that, firstly the Council had not held a Hearing into the application on the grounds that the proposed extension went against the Finalised Local Plan and, secondly, that the Council had refused his request to be heard at the Committee meeting to consider the application. Mr C stated that elected members had not been advised of the details of his request, only that he had wanted to be heard.

23. The Council have provided me with a copy of the Hearings procedure in relation to the planning application decision-making process. They have explained that, in line with the procedures, an applicant or objector may request to be heard by the Committee before a proposal is determined. The Council's written procedure stated that, in terms of planning legislation, a Hearing must be offered where objections are lodged to an application and the officer's recommendation was to grant planning consent contrary to the terms of the approved Structure or Local Plan policy or standards. In this case, the Council have explained to me that the proposal complied with the relevant policies of the Adopted and Finalised Local Plans and the reasons for this were detailed in

the relevant planning report. In these circumstances, there was no need for a Hearing in terms of planning legislation.

24. In all other instances, requests for Hearings would be considered by the Committee. In response to Mr C's request, he was advised that there was no automatic right for objectors to be heard by the Committee and that if a Hearing was agreed, the application would be continued to another date when the Hearing would be held. If a request was not agreed the Committee would proceed to deal with the application on the day.

*(f) Conclusion*

25. In this case, Mr C's request was considered at the Committee meeting and, following detailed discussion, it was decided to refuse Mr C's request and consider the application. This was a discretionary decision for the Council to take. I am satisfied that Mr C's request was considered in line with procedures and I see no grounds to challenge the Council's decision. I do not uphold this aspect of the complaint. In reaching this decision I am also satisfied that the elected members were fully aware of Mr C's objections and concerns in relation to the proposed application.

**(g) The Council failed to handle Mr and Mrs C's formal complaint in line with the Council's complaints procedure**

26. Mr and Mrs C were dissatisfied with the Council's handling of their representations. They alleged that the Council had failed to address most of the issues raised by them. In particular, their continuing concerns about overshadowing and sunlight calculations.

*(g) Conclusion*

27. Having carefully considered the available evidence, which included numerous letters and emails from the Council to Mr and Mrs C, I am satisfied that the Council have responded to Mr and Mrs C's representations and have explained the reasons for their decision. In view of this, and given the number of meetings planning service officers held with Mr and Mrs C to discuss their concerns, I do not uphold the complaint.

**Explanation of abbreviations used**

Mr and Mrs C	The complainants
The Council	South Lanarkshire Council
BRE	Building Research Establishment
The Committee	East Kilbride Area Committee
The Adviser	The Ombudsman's planning adviser
The Adopted Local Plan	Adopted East Kilbride and District Local Plan
The Finalised Local Plan	Finalised South Lanarkshire Local Plan (as modified)