

Case 200802723: Midlothian Council

Summary of Investigation

Category

Local government: Planning; complaint from applicant about pre-planning application advice

Overview

The complainants (Mr C and Ms C) wanted to alter and extend their home which is a listed mid-terraced building in a conservation area. They sought advice from Midlothian Council (the Council) about the acceptability of their intentions before committing expenditure on making applications for planning and listed building consent. Those applications were refused and appeals to the Directorate of Planning and Environmental Appeals failed. Mr C and Ms C considered that the Council's response to their pre-planning application enquiries had been inadequate.

Specific complaint and conclusion

The complaint which has been investigated is that the Council's response to Mr C and Ms C's pre-planning application enquiries was inadequate (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. The complainants (Mr C and Ms C) wanted to alter and extend their home which is a listed single storey mid-terraced building in a conservation area. They sought advice from Midlothian Council (the Council) about the acceptability of their intentions before committing expenditure on making applications for planning and listed building consent. Their applications were refused in August 2008 and appeals to the Directorate of Planning and Environmental Appeals failed. Mr C and Ms C considered that the Council's response to their pre-planning application enquiries had been inadequate.

2. The complaint from Mr C and Ms C which I have investigated is that the Council's response to Mr C and Ms C's pre-planning application enquiries was inadequate.

Investigation

3. I considered information provided by Mr C and Ms C, their building consultant (the Agent) and the Council. I visited the locus, inspected the Council's files, and spoke to two of their officers. 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 Ms C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council's response to Mr C and Ms C's pre-planning application enquiries was inadequate

4. Mr C and Ms C live in a single storey mid-terraced listed cottage in a town in Midlothian. The cottage is situated in a local conservation area.

5. Mr C and Ms C contacted the Council's Development Management Service by email on 4 February 2008. They stated that they wished to replace their front windows in pvc and front door in upvc, and add a rear single storey extension with a pitched slate roof and French doors. They asked for feedback before they embarked on instructing the drafting of plans.

6. A response was sent by a senior planning officer (Officer 1) on 4 February 2008. Officer 1 pointed out that the property was C listed and that it would be necessary for Mr C and Ms C to apply for planning permission and listed building consent. Officer 1 drew attention to specific Council planning

policies contained in the Midlothian Local Plan and stated that it was not the Council's policy to allow upvc front windows and doors. Officer 1 stated that he could not comment on the merits of an extension and invited Mr C and Ms C to provide indicative drawings. He suggested that a modestly scaled extension might be acceptable provided it was of a suitable design and used appropriate materials. Officer 1 highlighted features of the Council's relevant policy DP3 on House Extensions (available online). He emphasised that his comments were being made on an informal basis and were not binding on the Council.

7. In an email of 8 March 2008 to Officer 1, Mr C and Ms C asked for a meeting during the week commencing 10 March 2008 to show the Council a sketch of their proposed extension. Officer 1 responded on 18 March 2008 stating that he might not be dealing with their letter when it arrived, but that all case officers had to deal with their statutory caseload as a priority rather than pre-application letters. Noting that their home was listed, he added 'we do try to help with advice at early stages though'.

8. Ms C stated that she attended the Council's planning office on 25 March 2008 with two of her work colleagues and personally handed in a scaled indicative plan to a male officer who made a photocopy. The Council have one a male planning information officer (Officer 2) who normally deals with the public. Officer 2, however, had no recollection of meeting with Ms C. He accepts that it was possible that he did meet with her briefly in the reception area to receive any documents that were being hand-delivered. He wrote to Mr C acknowledging receipt of an item on 26 March 2008. That letter stated that the matter was being dealt with and that he would make contact with Mr C as soon as possible. There was no subsequent response.

9. Mr C stated that in early May 2008, he spoke to Officer 1. According to Mr C, when he asked about the drawing submitted by Ms C, Officer 1 stated that Mr C and Ms C would need to submit proper architectural drawings and an application for listed building consent for their proposals to be considered. They say that this was despite their indicative plan being to scale and showing exactly where they proposed to build. Officer 1 informed me, however, that he did not recall receiving or seeing any information, nor of having any further contact with the prospective applicants or their agent.

10. The Council accept that Mr C or Ms C submitted an item on or immediately before 26 March 2008 but are not able to say what it was. In response to my

inquiry (when I forwarded a copy of the indicative plan and photograph supplied to me by Mr C and Ms C), the Council's Head of Planning (Officer 3) stated that having checked with all officers currently in post within the Council's Development Management Section, none had any recollection of seeing the indicative plan and photograph. At interview, Officer 3 stated that documents on matters where there was no planning application would be retained on a departmental 'street file' but the indicative plan was not now retained on that file.

11. Mr C and Ms C stated that, in the absence of a feedback on the indicative plan, and Mr C's telephone call with Officer 1 in May 2008, they considered that they had no option but to request the Agent to prepare plans and to submit the applications for planning and listed building consent. This resulted in an expenditure of £1,220.41 in payment to the Agent and £145.00 for the planning application fee.

12. The applications for planning consent and listed building consent for a single storey rear extension were registered by the Council on 18 June 2008 and allocated to a planning case officer (Officer 4). On 26 June 2008, Officer 1 supplied Officer 4 with a copy of his pre-application advice of 4 February 2008. He informed her that he had had no subsequent sight of specific proposals thereafter. Officer 4 checked the previous planning history of the terraced cottages, visited the site on 14 July 2008, instituted consultations, and arranged for the advertisement of the application for listed building consent. There was no contact between her and the Agent.

13. Officer 4 prepared a single report on the two applications on 8 August 2008 recommending refusal. Her recommendations were accepted as a delegated decision. The decision notice, refusing planning consent, was issued on 18 August 2008. It gave eight grounds for refusal. The decision on listed building consent, citing five grounds for refusal, was issued on 21 August 2008.

14. Upon receiving the decision notices, Mr C and Ms C contacted a local councillor (the Councillor). The Councillor arranged a meeting with the Council's Development Management Manager (Officer 5) on 22 September 2008. Mr C and Ms C described this meeting as unhelpful; they could not get answers to their questions, and were given three options, none of which included reimbursement of their costs. As a result of discussion at the meeting, on 3 October 2008, the Agent submitted plans for two revised

schemes considerably reducing in size the footprint of the proposed rear extension by up to 40 percent. On 11 November 2008, Officer 4 responded stating that neither scheme addressed the concerns raised in relation to the previous applications in terms of the impact on the form and character of the listed building and the row of cottages. She was not minded to support either scheme.

15. Ms C submitted appeals to Scottish Ministers against the refusals. The Inquiry Reporter dismissed the appeals in a decision letter of 6 April 2009.

16. Mr C and Ms C complained to Officer 3 on 3 March 2009. They maintained that the Council could have done more to provide them with advice through a meeting and a site visit at the pre-application stage and so have prevented them from the abortive expenditure incurred in submitting the applications. They felt that they had been robbed of a substantial amount of money taken from their life savings and considered that they should be fully reimbursed.

17. Officer 3 responded on 27 March 2009. He explained the role of pre-application advice generally and referred to the context of Mr C and Ms C's proposals. After investigation, Officer 3 considered that Ms C's applications had been handled in a proper and competent manner, that their request for reimbursement of costs was not justified and was, therefore, declined. In a response of 3 June 2009 to their appeal the Council's former Chief Executive stated that he had reviewed the case, considered that Officer 3 had answered the complaint fully, and agreed that the applications were handled in a proper and competent manner.

18. The Council informed me that they did not have any formal written guidance to planning officers with regard to handling requests for pre-application advice, but that the Council endeavoured to provide high quality pre-application advice in response to both verbal and written requests. In the case of the latter, they informed me that it is usual practice to refer to planning policy, check the planning history and, in the majority of cases, to visit the site; and in all cases to provide either a verbal or written response. In responding to my decision to investigate, Officer 3 stated that he had asked Officer 5 to prepare a guidance note for publication in leaflet form and on the planning pages of the Council's website. The intention is that the leaflet will be available in the Council's offices, distributed to libraries and other public buildings and to

community councils. Prospective applicants, at their first point of contact with the planning service, will be supplied with a copy of the leaflet or directed to the Council's website.

Conclusion

19. Pre-planning application enquiries have an important role to play in the planning process. Sound advice and clarification at the informal stage before an application is submitted will generally reap its rewards in the smoother formal consideration of a subsequent application. I find that Officer 1's response to the initial email enquiry was prompt and appropriate. It referred Mr C and Ms C to relevant policies and guidelines on house extensions available on the internet, expressed a personal view that a modest extension might be entertained, but concluded with an appropriate caveat.

20. Mr C and Ms C clearly expected contact from the Council after 26 March 2008, if only to advise of deficiencies in their indicative plan. I cannot condone the loss of that document, which was unfortunate. The copy of the indicative plan that I have seen accurately represents the dimensions of the footprint of the extension, but does not in my view show all of the information which would have been necessary for the Council to form a considered view.

21. Given the Council's need to give first priority to registered applications in a timely fashion, I cannot conclude that a meeting or site visit should have taken place though the Council say they try to visit, particularly in the sensitive circumstances of a listed building in a conservation area. I have no evidence that Mr C and Ms C accompanied the indicative plan with a covering letter requesting a meeting and a site visit, or that they followed up by letter the absence of comments from the Council. I cannot conclude that, had comments been made, Mr C and Ms C would not have pursued their applications.

22. The degree of certainty Mr C and Ms C were seeking from the pre-planning advice was not, in my view, realistic. The Council, in responding to a pre-planning application enquiry can neither prejudice their future consideration of the merits of a subsequent planning application nor advise that there is no possibility of any future planning application being approved. Although I empathise with their position, I am unable to uphold Mr C and Ms C's complaint that the Council's procedures were inadequate.

23. I am pleased, however, to note the steps now being taken by the Council (see paragraph 18) to improve and publicise their pre-planning procedures. I would hope that the revised procedures entail both the allocation of a reference number and a tracking system.

Recommendations

24. I have no recommendations to make.

Explanation of abbreviations used

Mr C and Ms C	The complainants
The Council	Midlothian Council
The Agent	A building consultant instructed by Mr C and Ms C to prepare drawings and submit applications
Officer 1	A Council senior planning officer
Officer 2	A Council planning information officer
Officer 3	The Council's Head of Planning
Officer 4	The Council's planning case officer who considered the applications for planning and listed building consent
The Councillor	A local councillor
Officer 5	The Council's Development Management Manager