

## Scottish Parliament Region: Highlands and Islands

### Case 200903131: The Highland Council

#### Summary of Investigation

##### **Category**

Local government: Planning; policy; administration

##### **Overview**

The complainant (Mr C) complained that he had received misleading pre-planning application advice from The Highland Council (the Council). Mr C is aggrieved that he spent unnecessary time and substantial costs in preparing and submitting planning applications as a direct result of the advice from the Council.

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

The complaint which has been investigated is that the Council failed to deal adequately with the pre-planning application enquiry (*upheld*).

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

The Ombudsman recommends that the Council:

- (i) inform him when the caveat has been introduced and publicised on their website.

*Completion date*

21 July 2010

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

## **Main Investigation Report**

### **Introduction**

1. On 2 November 2009 the complainant (Mr C) complained to the Ombudsman that he had received misleading pre-planning application advice from The Highland Council (the Council). The pre-planning application enquiry (the Enquiry) related to two planning proposals for the development of land for commercial purposes. Mr C said that the Council had asked him to supply a design and letter outlining his proposed plans. Following the Council's response to the Enquiry on 2 June 2008, two planning applications in the name of Company 1 were submitted and subsequently rejected by the Area Planning Applications and Review Committee (the Committee) on 3 March 2009. Mr C appealed to the Directorate for Planning and Environmental Appeals (the Directorate) regarding one of the planning applications but the appeal was dismissed and planning permission was refused.

2. The complaint from Mr C which I have investigated is that the Council failed to deal adequately with the Enquiry.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading the documentation, including correspondence between Mr C and the Council. As the investigation progressed, my complaints reviewer wrote to the Council on 13 January 2010 in order to obtain more information on the Enquiry. The Council provided further information on 4 February 2010.

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.

### **Complaint: The Council failed to deal adequately with the Enquiry**

5. On 2 November 2009, Mr C complained to the Ombudsman that he had received misleading pre-planning application advice from the Council. The Enquiry related to two planning proposals for the development of land for commercial purposes. According to Mr C, after he had contacted the Council for advice in May 2008, a technical support officer (Officer 1) asked him to supply a design and letter outlining the planning proposals.

6. Mr C subsequently wrote to Officer 1's superior, who was the Team Leader (Officer 2), on 19 May 2008 and provided a plan of the location and access road, together with a plan of the style of building. Officer 1 responded in writing to the Enquiry on 2 June 2008 stating:

'I have discussed the matter with my Team Leader and he will allow [the development] to be built on this site and strictly occupied on the basis that they are only occupied by tourists for 11 months of the year not permanent address. I look forward to receiving an application for the [development].'

7. On the basis of the advice contained within Officer 1's letter, Mr C said that he was expressly encouraged to submit planning applications which were subsequently rejected by the Committee on 3 March 2009. Mr C appealed to the Directorate on 2 April 2009 regarding one of the planning applications but the appeal was dismissed on 2 June 2009 and planning permission was refused.

8. On 30 July 2009, Mr C complained to the Council that he did not know the advice, contained within Officer 1's response on 2 June 2008, had been given 'without prejudice'. Mr C suggested recompense for costs incurred as a direct result of receiving incorrect advice. Mr C told the Council, that had he known the advice was given 'without prejudice', then he would not have submitted the applications.

9. The Council responded to Mr C's complaint on 20 August 2009 and explained that the Enquiry advice was given without prejudice to any further recommendation or decision. The Council explained that there was no justification in Mr C's claim for compensation because the Directorate had concluded that the Council had not acted in an unreasonable manner. Furthermore, the Council expressed to Mr C that they were surprised his lawyers had not made the implications and risks in submitting planning applications absolutely clear to him.

10. However, the Council acknowledged that the Enquiry advice appeared to be conclusive when this was not the case and apologised that the advice 'did not prove sound in the formal consideration of the proposals'. The Council told Mr C that the qualification of the advice should have been made clear; and as a result, the Council have 'reminded staff of the need to ensure that advice provided in such circumstances is clearly stated to be given without prejudice'.

11. Mr C remained dissatisfied with this response and wrote to the Chief Executive on 1 September 2009 stating that 'we approached the Council as the competent and appropriate body for planning advice. It was outwith the remit of our lawyer to advise on the implications and risks'.

12. In a letter of 23 September 2009, the Chief Executive explained that, at an early stage, it is not always possible to assess with any certainty whether an application is likely to be successful or not. The Chief Executive said that 'more often than not, this is simply down to not having full information available'. The Chief Executive later apologised to Mr C on 22 October 2009 for incorrectly stating that Officer 1 did not have the benefit of knowing the proposed design when providing the Enquiry advice. However, the Chief Executive concluded that pre-planning application advice is not binding on members of the Committee. The Chief Executive further commented that even if the recommendation had been to approve the planning applications, the Committee had refused planning permission and an appeal against that refusal of consent was dismissed by the Directorate.

13. My complaints reviewer asked the Council why they did not include the caveat 'without prejudice' in response to the Enquiry. The Council told my complaints reviewer that between 2006 and 2008, their technical support officers had taken on an additional workload due to the volume of planning applications and professional staff vacancies at this time. The Council explained that this resulted in technical support officers dealing with more complicated planning applications than they had been used to. The Council also told my complaints reviewer that 'whilst it is certainly not good practice to omit a caveat qualifying the status of the advice being given, there is no statutory requirement to provide such a qualification'. However, the Council have accepted that it is both good practice and standard practice for them to include the caveat in their correspondence.

14. The Council, in response to my complaints reviewer, provided a copy of an undated note which confirms that Officer 1 had sought advice regarding the proposed development from Officer 2, which was subsequently reflected in the Enquiry advice given to Mr C on 2 June 2008.

### *Conclusion*

15. I recognise that pre-planning application advice is not formally binding upon any further decision made by the Council during their formal consideration of the proposed development. However, the Council did not include any qualification to their advice in their written response on 2 June 2008.

16. Although there is no statutory obligation for the Council to have included a caveat, they have acknowledged that one should have been included in their response letter of 2 June 2008.

17. I have considered whether the Council should provide financial remuneration for the costs Mr C incurred in submitting the planning applications or any other costs incurred. Although Mr C has said that he would not have proceeded had the advice been qualified, this has been said with hindsight. I am unable to determine whether or not Mr C would have progressed with the applications or what subsequent actions he would have taken, had the caveat been included. Therefore, I do not consider it reasonable for the Council to provide financial recompense as a means of redress.

18. I welcome the steps the Council have taken to redress the matter by reminding staff of the need to ensure that advice is clearly stated to be given without prejudice. Furthermore, the Council have informed my complaints reviewer that they will put measures in place for a suitable caveat to be attached to all paper and e-correspondence where planning and building standards staff offer advice to customers. This information will also be published on the relevant section of the Council's website.

19. Mr C should have been made fully aware of the conditional nature of the Enquiry advice, so that he would have been in a position to make a fully informed decision on whether or not to proceed to submit the planning applications. For this reason, I uphold the complaint.

### *Recommendation*

20. The Ombudsman recommends that the Council:	<i>Completion date</i>
(i) inform him when the caveat has been introduced and publicised on their website.	21 July 2010

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

**Explanation of abbreviations used**

Mr C	The complainant
The Council	The Highland Council
The Enquiry	Mr C's pre-planning application enquiry
Company 1	A company set up by Mr C
The Committee	Area Planning Applications and Review Committee
The Directorate	Directorate for Planning and Environmental Appeals
Officer 1	A technical support officer
Officer 2	Officer 1's superior, the Team Leader