

Scottish Parliament Region: South of Scotland

Case 200800537: East Lothian Council

Summary of Investigation

Category

Local government: Planning; complaint by objector to planning application

Overview

The complainant (Mr C) raised concerns about the handling by East Lothian Council (the Council) of an application (the Application) for planning consent for a new house on a main road opposite his own property in a conservation village in East Lothian. He was particularly concerned about the likely dominant effect on a former smithy and on parking congestion on the main road.

Specific complaint and conclusion

The complaint which has been investigated is that in recommending approval of the Application, the Council's Transportation Division and planning case officer failed to require compliance with relevant Council planning policy in respect of car-parking provision (*partially upheld*).

Redress and recommendation

The Ombudsman recommends that the Council review the present procedures for the need for site visits by their Transportation Division officers prior to responding to consultations on planning applications.

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

Main Investigation Report

Introduction

1. The complainant (Mr C) resides in a corner house in a conservation area in a village in East Lothian. On the opposite side of a main road is a former smithy on a sunken site. The road frontage of the land immediately to the south of the smithy had been developed in the past 30 years with modern houses and more recently there had been applications to develop gap sites on that frontage. The complaint made by Mr C concerned a particular application (the Application) for a site adjoining the southern boundary of the smithy.

2. The complaint from Mr C which I have investigated is that in recommending approval of the Application, East Lothian Council (the Council)'s Transportation Division and planning case officer failed to require compliance with relevant Council planning policy in respect of car-parking provision.

3. Mr C also complained that in producing the officer recommendation for approval of the Application, the planning case officer failed properly to assess the loss of sunlight and daylight to the smithy. The owner of the smithy had, however, received neighbour notification of the Application and was supportive of the proposal. Mr C did not complain that his own property, to the west of the site, would be adversely affected by loss of sunlight and daylight. I accepted that Mr C was entitled to make, and did make, representation that overshadowing of the smithy by the new house would serve to minimise its prominence. I considered that the grounds of that objection were clearly set out, and commented upon, in the planning case officer's report. In the absence of any defect in service or administrative shortcoming, I informed Mr C on 20 February 2009 that I was unable to pursue further my consideration of this complaint but would investigate his other complaint.

Investigation

4. I considered information provided by Mr C and the Council's response to my enquiry, which I shared with Mr C. I also had regard to his observations on the information provided by the Council. I have seen photographs taken by Mr C in the summer of 2008, acquainted myself with the location of the site on 20 January 2009, and have scrutinised digital images taken by the Council on 9 March 2009. 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: In recommending approval of the Application, the Council's Transportation Division and planning case officer failed to require compliance with relevant Council planning policy in respect of car-parking provision

5. Mr C lives in a conservation area in a village in East Lothian. His property is situated on the south west corner of two main roads. Immediately to the east of his property is a sunken building on the corner, which was a former smithy. While of some antiquity, Historic Scotland had not listed the smithy building as being of historic or architectural interest. In the past 30 or so years, several modern houses had been built on the east side of the main road frontage to the south of the smithy, opposite Mr C's rear garden wall. There are no parking restrictions on either side of that main road.

6. In the past three years, there had been a number of applications for additional development on the east side of the road. On 19 June 2006, an application was submitted for 'change of use of outbuilding to form self-catering accommodation and pedestrian access' on a site to the south. Mr C submitted a representation electronically on 9 August 2006 expressing his concern about the increased on-street parking which would result if that application was approved. Following a change in description to 'extensions to and change of use of outbuilding and garage, to form self-catering accommodation', that application was the subject of re-notification on 1 September 2006.

7. Consulted on that application, the Council's Senior Transportation Manager recommended refusal on grounds of insufficient parking for both the existing dwelling and the self-catering unit. Because the site frontage was on to an A class road, vehicles required to be able to both access and egress the site in a forward gear which, from the plan submitted, was not possible. The first application for the site to the south was withdrawn on or about 30 November 2006 and a further application immediately submitted for 'alterations and extension and change of use of outbuilding and garage to form self-catering accommodation, formation of pedestrian access, erection of fencing and gates, removal of gates and part removal of wall'. Mr C was notified of that application and made representation. A decision to approve the second application for that site was made on 14 December 2006. Because of a need to complete and register an agreement under section 75 of the Town and Country Planning (Scotland) Act 1997, however, that application was not approved until 21 July 2008. As a result of a re-assessment of the suitability of

the existing buildings for alteration and extension, a third application (for a new build self-catering accommodation) for the site to the south was submitted in September 2008 and granted conditional approval.

8. On 6 September 2006, an application was made for planning consent for a site adjoining the rear boundary of the smithy, then occupied by a small copse of trees. Mr C saw an advertisement for that application in the local newspaper on 20 October 2006. He submitted representations on 9 November 2006 on the grounds that in his view, a number of false claims were made in the application and that it breached planning guidelines in overlooking to the north and contravened three East Lothian Local Plan policies. A letter of opposition to the proposal was submitted by the local community council on the basis of proposed loss of the area of woodland. That application was not determined and was eventually withdrawn on 15 August 2007 after the Application was submitted.

9. The Application was submitted for the same site adjoining the rear boundary of the smithy on 31 July 2007. The Application was for planning consent for the erection of '1 house, wall, railings and gate, formation of vehicular and pedestrian accesses, hardstanding area and part demolition of wall'. Mr C received neighbour notification in respect of the Application, which was registered by the Council on 27 September 2007.

10. Mr C submitted an objection to the Application on 9 October 2007, drawing attention to the Village Statement for the village, and to various Local Plan policies in the East Lothian Local Plan 2000. Mr C urged that a site visit should be paid. He felt that because of the size of the proposed house and the small size of the site, the Application should be refused. The Application attracted four other letters of objection and eight letters of support including one from the owner of the smithy. The Application was the subject of consultation with the Council's Transportation Division, the Scottish Environment Protection Agency, the Council's heritage officer and the local community council. The community council opposed the granting of consent.

11. The Council's Transportation Division indicated in a memorandum of 8 October 2007 that they had no objection in principle to the Application but required a change to make it acceptable. They noted that as a single house dwelling with less than five rooms it would require two off-street parking spaces. They suggested that a proposed vehicle turntable be increased to 4.8 metres.

They recommended the imposition of three conditions. On 25 October 2007, a Transportation Division planning officer followed up this response with an email to the planning case officer. He stated that he had originally asked for two parking spaces to satisfy the 150 percent parking criteria as set out in the 'East Lothian Council Standards for Development: Roads' but that, following on his inspection of the surrounding public road, he had made an assessment that there was sufficient safe kerbside parking for visitors. He, therefore, recommended that the single vehicle turntable proposed by the applicant was acceptable.

12. The Application was the subject of a nine page officer recommendation preview report prepared on 17 April 2008. The report set out the context of the Application site and policy and development plan background. It detailed the grounds of objection and the views of consultees. Specifically, it dealt with the three Local Plan policies referred to in Mr C's letter of objection of 9 October 2007. It recommended approval subject to seven conditions. Condition 6 incorporated the recommendations of the Council's Transportation Division. The approval was issued on 24 April 2008 under the Council's expedited procedures.

13. Mr C contacted a local councillor and the Convener of the Planning Committee specifically seeking answers to points including the apparent waiving of the Council parking standards (Policy T7 of the East Lothian Plan 2000). After his first contact with the Ombudsman's office on 28 May 2008, Mr C wrote to the Council's Chief Executive on 29 May 2008 on these two main points. Mr C stated that he was convinced that, had the Application been properly considered, the recommendation to grant consent to the proposal in its current form would not have been reached. He considered unacceptable the proposal to amend the parking provision, which would in his view reduce road safety and amenity. He considered that, to reduce the loss of sunlight to the smithy, a building of less assertive height was required and that parking provision for two off-street parking spaces was essential to maintain road safety at its current level. In his view a building of no more than one and a half storeys with two off-street parking spaces would satisfy these requirements.

14. This letter was not acknowledged until 23 June 2008. An apology was given for the delay in reply. Mr C was informed that the Council's Director of Environment would deal with his letter on his return from annual leave during the week commencing 14 July 2008. The Chief Executive responded on

12 August 2008 to a reminder from Mr C. He apologised for the delay in replying, which he attributed to staff being on holiday. The Chief Executive replied on 25 August 2008 apologising again for the delay in that response. The bulk of his letter dealt with the assessment of the loss of daylight (see paragraph 3). On the issue of parking, the Chief Executive stated that the Head of Transportation's view was that, as the proposed house was small, one parking space was sufficient and the occasional visitor could be catered for on-street. The Chief Executive informed Mr C of his ability to pursue the matter with the Ombudsman.

15. In making his complaint on 28 October 2008, Mr C stated that he was aggrieved that the Council had not required two off-street parking spaces and sought their provision and that the height of the proposed house relative to the smithy be reduced.

16. In responding to my decision to investigate, the Council's Chief Executive provided me with a five page statement relating to the Council's response to parking provision in respect of the four applications in respect of the two sites and, in particular, the Application. He informed me that the Council's parking standard for residential development in 'East Lothian Council Standards for Development: Roads' was 150 percent off-street car-parking provision for each proposed house with up to five habitable rooms. The 150 percent provision is one space per house within the curtilage of the house and half a space per house for visitor use, which can be provided either as in curtilage parking or on-street parking in the form of specifically designed parking bays. The parking standard was particularly designed to apply to proposed developments comprising a number of new houses. With some degree of flexibility it is also applied to single house developments. Where only one new house is proposed, the standard of provision of the half car-parking space for visitors is applied 'reasonably and pragmatically'. In the case of the site of the Application, the amount of available developable land dictated that, in addition to the house proposed for it, only one off-street parking space could be accommodated with an off-street turning facility in the form of a turntable, accessed from the public road by a proposed new vehicular access. This was required because the new vehicular access was on to a classified road. The Council's Transportation Division was of the view that the proposed arrangement for vehicular access, off-street parking and turning provision would be of a safe operational standard and the use of them would not result in a safety hazard on the public road.

17. The Chief Executive stated that, thereafter, the material consideration was how the Council's parking standard in respect of visitor car-parking provision could be satisfactorily met in the interests of road safety. The Chief Executive confirmed that, after the consultation email was sent on 8 October 2007 stating that a second off-street parking space should be provided, the Transportation Division planning officer had paid a site visit, took the view that the requirement for visitor parking could satisfactorily be met on-street and followed this up with an email on 25 October 2007 (see paragraph 11). The Chief Executive confirmed the dimensions of the main road (8.8 metres at its widest, 7.8 metres at its narrowest to the south). He stated that the Transportation Division were satisfied that at the time of consideration of the Application, there was no evidence that cars were being parked regularly and excessively at the same times of day on both sides of the main road, such as to cause unacceptable obstruction to the safe flow of traffic on the public road, and that there was sufficient capacity for visitors to the proposed new house to kerbside park on the road.

18. The Chief Executive set out in some detail how the parking provision for the other site to the south had been considered (see paragraph 6 and paragraph 7) and how it was possible to view favourably the revised proposals as an acceptable solution subject to an appropriate planning condition. The view of the Council was that the type of development proposed on the more southerly site was materially different from the situation obtaining in respect of the site of the Application. On two occasions planning consent was granted for proposals involving the southerly site, with all parking achieved within the curtilage. This did not in his view prejudice the integrity of the decision to grant consent to the new house proposed in the Application, with its visitor car-parking space provided on-street.

19. The Chief Executive provided me with a number of digital images taken in the late afternoon and evening of 9 March 2009. Unlike the photographs taken by Mr C in the summer of 2008 (before works started) and my own observations on 20 January 2009, these do not show an existing practice of vehicles part-parking over the pavement on the east side of the main road. The Chief Executive stated that the Council's Transportation Division maintained the advice given in the determination of the Application, namely that cars can be parked on each side of the public road without causing undue obstruction to the flow of traffic along the middle of the road and that there was ample reserve capacity for kerbside parking. There was no compulsion with regard to the safe

movement of traffic on the road for vehicles to be part-parked on the road and part-parked on the pavement as was known to occur.

20. Before preparing my draft report, I shared the Chief Executive's response with Mr C. In his reply of 28 May 2009, Mr C commented that the fact that the site of the Application could only accommodate one parking space in addition to the house vindicated his original objection that the house was too large for the site. He queried the visit by the Transportation Division planning officer having taken place after the Senior Transportation Manager had sent his consultation response on 8 October 2007. Mr C noted that the Transportation Division planning officer's email of 25 October 2007 gave no indication that it had been copied to his manager. He also queried whether two cars might be accommodated off-street by increasing the diameter of the turntable from 3.4 metres to 4.8 metres. He maintained that the Council had acted inconsistently in not requiring two off-street parking spaces in respect of the Application when, from Mr C's own research, that had been a requirement of all other applications granted consent in the village. He noted that the Council had made no mention of pedestrian safety. He noted that the Transportation Division had granted permission for a skip for the ongoing building works in respect of the Application, which was sited on the west rather than the east side of the public road.

Conclusion

21. Mr C was clearly opposed to the Application and had the opportunity to make his views known. Those views have been put forward cogently by Mr C. They have also been taken into account by the Council who granted planning consent for the Application on 24 April 2008 under their expedited procedures. With reference to the latter two of the three sets of proposals concerning the other site (see paragraph 6, paragraph 7 and paragraph 18), the Council granted consent with all required parking provision being catered for off-street. I accept the Council's position that in the case of single house developments (and presumably any development involving an odd number of houses) they require to be pragmatic in their application of their policy.

22. The Council were clearly entitled in the instance of the Application to reach a view that visiting cars could be catered for on-street. It is, however, the case that the position of the Transportation Division changed between 8 and 25 October 2007 following a site visit. I believe that consultation with the roads authority on planning applications is an important and material part of the

determination of most planning applications of this nature. Prior to October 2007 the Council's Transportation Division had been involved in at least three previous applications, one for the Application site and twice in respect of the more southerly site. Best practice would suggest to me that if their view was amenable to change as a result of a site visit then that site visit should have been made prior to rather than after the consultation response was sent on 8 October 2007. I partially uphold the complaint to the extent that I consider that a site visit should have preceded the issue of the Transportation Division consultation response.

Recommendation

23. The Ombudsman recommended that the Council review the present procedures for the need for site visits by their Transportation Division officers prior to responding to consultations on planning applications.

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

Explanation of abbreviations used

Mr C	The complainant
The Application	An application for planning consent for one house on a site to the east of Mr C's home
The Council	East Lothian Council