

Appeals Panel 2

Date: Tuesday, 03 May 2022

Time: 14:00

Venue: Slupsk Room

Present: Councillor Mrs Marilyn Bowman, Councillor David Shepherd, Councillor Peter Sunter

Also Present: Complainant

Officers: Deputy Chief Executive
Corporate Director of Economic Development
Head of Development Management
Assistant Solicitor

AP2.16/22 APOLOGIES FOR ABSENCE

No apologies for absence were submitted.

AP2.17/22 DECLARATIONS OF INTEREST

In accordance with the Council's Code of Conduct the following declarations of interest were submitted:

Councillor Shepherd declared an interest in relation to item B.1 - Corporate Complaint - Appeal Against Development management Service. The interest related to his being a member of the Development Control Committee and his participation in the determination of the application which was related to the complaint.

The Complainant stated that they were aware Councillor Shepherd had taken part in the meeting where the planning application was determined and that they were happy for him to remain in the meeting to consider the complaint.

AP2.18/22 PUBLIC AND PRESS

It was agreed that the items in Part A be dealt with in public and the items in private be dealt with in Part B.

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A to the 1972 Local Government Act.

AP2.19/22 CORPORATE COMPLAINT – APPEAL AGAINST DEVELOPMENT MANAGEMENT SERVICE

(Public and Press excluded by virtue of Paragraph 1)

The Chair advised the purpose of the Panel was to consider the service the Complainant had received from the Council: the Panel was not able to re-appraise nor alter any decision taken by the Development Control Committee (DCC). The Chair invited the Complainant to tell the Panel about their complaint.

The complaint related to the service received from the Council in respect of communications and objections from the Complainant regarding the determination of two planning applications for a retail store. The first application (Application A) granted Outline Permission for the proposed development, the second application (Application B) granted permission in respect of the Reserved Matters pursuant to the first application.

The Complainant asked the Chair if they were also a member of the Development Control Committee and whether members of that Committee were provided with appropriate internal or external training.

The Chair confirmed that she was a member of DCC but clarified that she had not participated in the meetings where the application that was the subject of complaint had been determined.

Regarding the training of DCC members the Chair advised that all DCC members received training and noted that members were not permitted to sit on the Committee if they had not. Furthermore, DCC training was ongoing for Members and Substitutes of the Committee throughout the year and in fact, training had been delivered the previous week regarding relevant new legislation.

With reference to their letter of 24 January 2022 (page 184 refers) the Complainant, said the issue was that the planning department was not where it should be; that they had submitted a complaint with the Chief Executive's office because they were uncomfortable with the report submitted to DCC in respect of Application B, as in their view it contained significant flaws and was inaccurate.

The Complainant had submitted a letter to the planning department in February 2021, but no reply was received until May 2021, despite a response from the Corporate Director saying it would be attended to. The Complainant found that to be unsatisfactory and noted that the response, once received, left with more questions than answers as the points they raised had been skirted around. The Complainant had written back to planning in May 2021 and again to the Chief Executive some weeks later, but had received no reply to either. A further letter was to the Chief Executive some weeks later, reminding the Chief Executive of the reasonable responsibility to reply with regard to the City Council's Charter and Freedom of Information Act which provided details on the requirement for officers to respond accurately and in a timely

fashion; but no response had been received. The Complainant wrote once again and still received no reply.

The Complainant had invited their MP to write to the Council on the matter, which they did, twice, and had received a reply from the Case Officer the day before the DCC meeting which determined Application B. They had engaged a third-party because they felt that the department seemed dysfunctional. The Council's formal complaints procedure had been initiated but it didn't work well; the timeline for processing matters was acceptable, but the response of the Corporate Director had not sufficiently responded to matters raised.

Both the Corporate Director and the Deputy Chief Executive in their Corporate Complaint responses had sought to explain the time taken to respond to the Complainant's communications by highlighting: the unprecedented increase in received in early 2021 and the associated impact on Officer workload; and the change to working practices necessitated by the restrictions imposed as a result of the Covid 19 pandemic, including migration from paper based systems to an electronic based system. The Complainant did not consider such explanations acceptable and asked what had done to ensure that the planning department was sufficiently resourced?

The Complainant could not understand why the notification of consultation letters advising those in the vicinity of the development site of the proposed scheme contained "not later than" date for responses, yet a number of responses had been received and accepted after that date. Moreover, in the Corporate Director's Stage 1 Corporate Complaint response she stated the date for responses was advisory/discretionary.

The Complainant asked how anyone would know the date was discretionary and who had the discretion to accept a submission after the given date, and where that was documented. The Complainant was not uncomfortable that such discretion was applied, they asked why people who legitimately submitted comments regarding an application may or may not have them placed before Members?

The Complainant had checked the Council's website and found nothing indicating the date was discretionary. They had been referred to the Carlisle City Council website but if they had no internet they would have to go to the library.

Officer reports to DCC on the applications made reference to "Shop Local", the Complainant asked what the term meant. There were a range of other retail outlets already in the area, whose existence had been identified in the Complainant's communications to the Council, but the point had been ignored by Officers. The inclusion of a large number of parking spaces in the proposed scheme did not seem necessary if the development was to serve a localised area.

In their correspondence, the Complaint had also set out concerns relating to the flood risk of the proposed development site. A hydrologist's report had been submitted with the planning application documents; the Complainant asked whether that report had been independently validated. The Council owned buildings in the locality of the proposed development which had

flooded in recent years, why had an Officer responsible for the Council's building stock not identified the hydrologist's report as inaccurate?

The Complainant had registered a "Right to Speak" at the meeting of DCC where Application B was submitted for determination but, in the event, was unable to attend. Therefore, the Complainant asked their Ward Member to make representations to the Committee on their behalf, which the Member agreed to do.

The Council's Right to Speak policy allocated individual members of the public three minutes to make verbal representation to DCC: it was silent on the matter of proxy but stated that another person may represent someone with a registered Right to Speak. The policy allocated ten minutes to a Ward Member for their submissions, as such the Complainant expected that the Ward Member would be afforded thirteen minutes in total to address the Committee.

At the meeting, the Ward Member had only been permitted ten minutes in total to speak. The Complainant had asked when that decision was taken, by whom and what briefing had been given to the Chair of the Committee prior to the meeting? Officers had responded that, as the Complainant was a resident in the Member's Ward, the time allocated to them to speak would be incorporated with the Member's. Such an approach was unfair as it curtailed the right to make representations of both parties.

Of greater concern was the receipt of a response from an Officer the night before the DCC meeting responding to issues raised by the Complainant five months previously; the Complainant stated that due to the untimeliness of the information they were denied the opportunity of developing the points it contained into a coherent case for their submission to the Committee.

The Chair asked if the Complainant had any further points to raise.

Prior to the submission of Applications A and B, pre-application discussions had taken place between the applicant / agent and the Council. The Complainant had written to the Council regarding the meeting that had taken place and requested a copy of the notes of that meeting (redacted as required), but they had not been provided. The Officer who had participated in the pre-application discussions also became the Case Officer for Applications A and B, the Complainant asked whether such a practice was usual?

Referring to Appendix 15, page 136, an email from an Officer stated "The issues you raised were brought to the attention of the agent for the application to consider in terms of the proposals". The Complainant had assumed that when written objections/support for an application were published on the Council's website, they were for the Case Officer to consider, they now understood that they were published for the applicant to review. The Complainant asked why issues raised by objectors were brought to the attention of the Agent and why Officers did not consider them when writing their reports?

Regarding the Complainant's last written communication under the Corporate Complaints policy (Appendix 31), they indicated that they would let the Panel determine if all matters therein had been responded to by Officers, it was their view that they had not been.

A Member asked whether the discretion applied to the deadline for consultation responses had directed affected the Complainant.

The Complainant responded that it was unlikely to have made a difference in this case. However, the Council's position was problematic as it may prevent people from making a submission after the date set out in the letter as they would believe it would not be considered.

In relation to the referral of matters raised in objections to the Applicant / Agent, a Member considered that to be the point of submitting an objection so that it may be passed to those who were developing the scheme to address the concerns and issues raised.

The Complainant replied that the response set out in Appendix 15 implied that comments/objections were sent to the agent as a matter of course.

The Member stated they had understood it meant the points would be considered and put to the Agent for them to be progressed if they could be, they felt it made sense and validated the objection process.

The Chair summed up the complaint as relating to the following issues:

- The length of time taken to respond to the Complainant's communications, the lack of response to 5 letters and information requested not being provided;
- The management and oversight of staffing levels in the planning department to ensure it was sufficient to deliver the service;
- The raising of objectors' issues directly with the applicant / agent;
- Officer's using unknown terms in public reports (Shop Local);
- Officer's accepting, without verification, information supplied by the applicant in support of the proposed scheme (Hydrologist's report);
- The incorporation of the Complainant's allocated Right to Speak time into that of the Ward Member who was making representations on their behalf;
- A substantial response to issues raised only being received the night before a meeting of DCC where the Complainant was making representations.

The Chair asked the Complainant if they were happy that all issues had been covered in the summary. The Appellant confirmed that they were and added they would like responses to all those points.

The Chair thanked the Complainant for attending the meeting and advised that a letter informing them of the Panel's decision would be sent within 15 working days.

The Complainant left the meeting at 14:55.

Consideration was given by the Panel as to which Officers they wished to speak to in order to clarify any issues relating to the complaint.

The Deputy Chief Executive, Corporate Director of Economic Development and the Head of Development Management were invited to attend the meeting at 15:10.

The Chair outlined the complaint and asked the Officers to respond.

In relation to the lack of provision of responses to objections submitted for any planning application, the Head of Development Management advised that, due to the sheer volume of comments, it was Council policy that individual objectors/supporters did not receive a reply. The Complainant had received a response to their objections as they had persisted in requesting it from the Officer.

The Complainant's contention that they had been disadvantaged by having only received a response from the Officer to their correspondence the night before the DCC meeting was not correct. The Committee meeting which was referred to was to consider Application B, the Complainant's comments pertained to matters in respect of the Outline Permission which had already been granted.

Staffing levels in the planning team were reviewed on a monthly basis as was the number of applications being processed. The transition to homeworking, necessitated by the restrictions imposed by central government in response to the global Covid 19 pandemic, had impacted on the team's overall efficiency; and was exacerbated by a significant increase in the number of applications received. A review of staffing was carried out and additional resources secured, however, they had taken time to come on line.

The alteration of working practices from office to home based had a significant impact on the team. Officers emphasised that they had been required to implement that; it had not been a choice based decision. Therefore, little time was available to consider contingencies as it was necessary for the service to continue operating, had those altered working practices been choice based, more time would have been taken to allow the new ways of working to bed in.

In addition to training provided to members sitting on DCC, advice was also provided to Members in the meetings from both a legal and planning perspective to ensure the decisions of the Committee were policy compliant and sound.

The Development Management Procedure Order 2015 (DMPO) required Local Planning Authorities to advertise and consult on planning applications. The 21 days it stipulated was a minimum time for the consultation to be carried out. Statutory Consultees, for example United Utilities, required to be able to see and respond to consultation responses to enable them to consider and respond to issues raised and to inform their negotiations with the applicant.

The Chair of the Development Control Committee, exercised their discretion as the Council's Constitution allowed, determined that the Ward Members' time for verbal representations would be restricted to 10 minutes. The Ward Member had been advised of the time restriction the day before the meeting, and in fact read out the Complainant's submission in its entirety at the start of the allocated time.

Local Planning Authorities had a duty to accept applications submitted, gather information from relevant sources and assess compliance with local and national planning policy before making unbiased recommendations to Members. It was not the Officer's role to assess the merits of comments and suggestions included in objections to an application, nor did they have the authority to amend a proposal, that was a matter for the applicant and/or their agent. On that basis, issues raised by objectors were passed to the Agent/applicant for them to consider and address.

The Chair thanked the Officers for attending the meeting, they left at 15:34.

The Panel then considered all the evidence presented to it prior and during the hearing and:

RESOLVED – That the appeal not be upheld on that grounds that in dealing with the complaint Officers had complied with and exceeded the requirements of relevant Council policy.

The Meeting ended at: 15:41