

28 June 2007

Mr J Gillen
Highfields Residents Association
4 Woodstock Drive
Southampton
Hampshire
SO17 1WY

Your ref:

Our ref: 06/B/11121/CK

Please quote our reference when contacting us and,
if using email, please put the reference number in the email subject header

**If telephoning contact: Ms Vereena Jones on 02476 820043
or e-mail v.jones@lgo.org.uk**

Dear Mr Gillen

Complaint against Southampton City Council

I wrote to you on 23 April 2007, setting out my provisional views and giving you an opportunity to comment. I have now considered the comments you made in your response dated 11 June 2007, and in this letter I shall respond to your key points and give my decision on your complaint.

The complaint

You consider that the main thrust of your complaint has been misconstrued, and you assert that your complaint was that the conduct of the Conservation Officer, Ms Davies, was inconsistent and negligent, that she failed to implement Council policy, and that she showed unjustified partiality against objectors to the planning application. The investigation file shows that Mrs Knowles spoke to you on the telephone in December 2006 when she read the summary of the complaint already under investigation to you and that you agreed with it, commenting only that your own information might add something to what had already been submitted by the first complainant. Mrs Knowles subsequently sent you a written copy of the summary of the complaint and also confirmed that she had asked the Council to comment on the second part of your complaint about the later retrospective planning application in respect of fencing. I would reassure you however that I have taken account of all the comments made by you in reaching my view on the complaints made to me. As part of that, I have of course considered Ms Davies' actions.

Inconsistency and the reasons for it

It is accepted that there were apparent inconsistencies in Ms Davies' memos of 20 January 2005 and 25 April 2005, and I referred to these in some detail in my previous letter. In your view Ms Davies applied less stringent standards in her appraisal of the second application than the first. The explanation offered by Ms Davies for the

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discrepancies identified was that in the second memo she was concerned principally with addressing the reasons for refusal of the first application, since there was no merit in expressing views about aspects the panel had already indicated were acceptable in its consideration of the first application. You take the view that Ms Davies invented this explanation in answer to the complaint, since she did not give this reason in her memo and it is the same reason given when your complaint was investigated at Stage II. But it seems to me that the explanation offered by the Conservation Officer was reasonable, and that it was not necessary for her to set all this out in her memo of 25 April 2005. On the second point I do not consider it remarkable or sinister that the explanation offered remained the same in the responses given at Stage II and at interview.

Incompetence

You express concerns that in responding to your complaint I have not made reference to sections 8-11 of your complaint and that you have seen no evidence that these matters were raised at interview. However, these sections all refer to discrepancies in the Conservation Officer's memoranda and in my previous letter I summarised the discrepancies identified and confirmed that at interview Mrs Knowles had explored those particular matters with the officer.

Failure to implement Council policy

You make reference here to Policy HE1 and the amendment of the wording of this policy from 'must not detract from' the character and appearance of the area to 'must preserve and enhance' the character and appearance of the area. You complained that the Conservation Officer failed to make her own independent appraisal of the application and made no reference to the principles of preservation or enhancement. It is clear however that the Conservation Officer was fully aware of the policy, since she had been responsible for its drafting, and she stated in her consultation response that she found the application acceptable in terms of impact on the conservation area. This was the officer's professional opinion and it is not my role to criticise it. The Case Officer's report draws attention to the fact that the pending designation of the conservation area was a material planning consideration when the second application was considered, and the Members exercised their own judgement in determining the application in accordance with due process.

Unjustified partiality

You express concerns that I have not commented specifically on part 12 of your complaint, which concerns what you consider to be partiality on the part of the Conservation Officer against objectors. In your view this was evidenced by the officer setting out in her second memo that her aim was to address the main objections to the proposal. I do not agree with your view that this was evidence of partiality. The Conservation Officer addressed the various concerns raised about the application and gave her professional views. If she had other concerns she could have raised them here too, but she was satisfied that the proposal was acceptable in terms of the conservation area. I know that you had concerns about the Conservation Officer's behaviour at the Panel meeting. But I did not consider it necessary to pursue this point further because the Council had already acknowledged what had happened. For me

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the key issue was how the Members ultimately took their decision on the planning application.

Misleading Council officers and Members

You feel that the lack of evidence in the Conservation Officer's memo of 18 May 2005 that she had applied Policy HE1 when assessing the application meant that she misled her colleagues and the Members. But Mrs Knowles' interviews with the Panel Members satisfied her that all concerned were fully aware of the pending conservation area status and what it meant in terms of their decision making. And as I explained in my previous letter, Members felt they had adequate information and were aware that they could have asked for clarification of any point if they felt it necessary. The Members recalled at interview that there had been a full debate before the matter moved to a vote.

Complaint about the boundary fence

You also feel that in dealing with the subsequent application for retrospective planning consent for the boundary fence, the Conservation Officer applied a 'lowest common denominator' approach, saying that the fence would not have as great an impact on the character or appearance of views from the common as others. And you refer to the officer's failure to observe that the fence as erected did not correspond to that for which the retrospective application had been made. But as I stated in my previous letter, the planning officer who was responsible for taking the delegated decision in this case was not in ignorance of any of the material facts when she took that decision. Again this officer was exercising her professional judgement having considered the facts.

Poor or selective record keeping

You complain that the Council did not disclose to you all the documents now copied to you by my office and you consider this was an attempt by the Council to obstruct your attempts to ascertain the background to Ms Davies' inconsistencies. The significant point though is that all the information disclosed to my investigator during the course of her investigation has been considered by me in reaching my decision on your complaint. If you consider that the Council has not responded fully to any request made under Freedom of Information legislation, you could of course pursue this with the Information Commissioner. The relevant contact details are as follows:

The Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF.

The telephone helpline number is 08456 30 60 60.

My decision on your complaint

I note your request for more investigation and for censure of Ms Davies. But the actions of the Conservation Officer, about which you complained, formed a part of the planning process which ultimately resulted in the granting of consent. In my view, that decision was not undermined by administrative fault. And so you have not been caused injustice as a result of maladministration by the Council.

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Page 4
Mr J Gillen

My investigation of this complaint will now therefore be discontinued and the file on it closed. Copies of this letter and of my previous letter will be sent to the Chief Executive of the Council, as the law requires me to inform the Council of my decision on your complaint.

If you want any papers you sent with your complaint returned to you please let us know. Our policy is normally to destroy files 14 months after we have decided the complaint

Yours sincerely

J R White
Local Government Ombudsman