

The Mortgage People

Independent Mortgage Brokers & Protection Specialists

230 Portobello High Street, Edinburgh, EH15 2AU

Tel: 0131 620 6506 Fax: 0131 620 6505 Email: info@mpeople.co.uk

12 November 2009

Mr J Stewart
PCC Chairperson
4a Elcho Terrace
Edinburgh
EH15 2EF

C.C.

R Gatliff - Previous Chairperson

D Cairns - Secretary

N Stroud - Secretary

Dear Mr Stewart

Please find enclosed a formal complaint made against Portobello Community Council with regard to its behaviour in dealing with Planning Applications submitted by the Portobello Partnership.

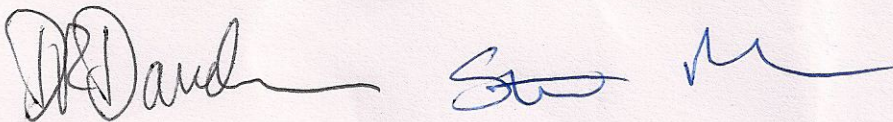
Our objective is not to apportion blame on any individuals but to ensure that in future the PCC actually conducts itself and appears to conduct itself in accordance with the terms and spirit of the guidance notes for Community Councils. We request a competent response to all of the points we raise and ask that in considering our complaint the matter should be put to the whole Community Council in line with Community Council Guidance Notes on Dealing with Disputes:

"A member of the public may request that their community council consider a particular issue. This request must be considered by the members. If it is deemed appropriate, then the matter should be included on the agenda for the next regular meeting of the Community Council. The Secretary or Chairperson should write to the person who raised the issue, inviting them to speak to the matter. If the community council does not consider the request appropriate, then a letter should be sent to the individual concerned notifying them of the reasons. Details of the request and the refusal should be reported to the next meeting of the community council and recorded in the minutes. **The person should be advised that if they are aggrieved by this decision then they may refer the matter to the City Council.**"

The PCC has lots of new members and we firmly believe that all will benefit from a full and frank discussion of these planning applications and the role played by the PCC going forward in handling future planning applications.

We look forward to receiving your response.

Yours sincerely



Dave Davidson & Stephen McIntyre
Partners
The Portobello Partnership

Partners D R Davidson S McIntyre

The Mortgage People is a trading style of The Portobello Partnership which is authorised and regulated by the Financial Services Authority

COMPLAINT TO THE PCC

REF: PLANNING APPLICATIONS - LAND 29m NORTH WEST of 5 MARLBOROUGH ST.

06/01734/FUL – Applicant: J Fenton

Agent: Stephen Hawkins

09/00236/FUL – Applicant: The Portobello Partnership

Agent: Ken Scott

09/00900/FUL – Applicant: The Portobello Partnership

Agent: Ken Scott

As a local business we would like to register a complaint that covers aspects of the Portobello Community Council's (PCC) involvement in the planning process. Permission was granted for our amended second application but we remain confused and dissatisfied with the actions of the PCC, which were inconsistent and without regard for the guidelines within which a Community Council should operate. Our complaint covers four main areas:

1. WHY ARE THE PCC INVOLVED?

Planning Guidelines make mention of the role that Community Councils can play with regard to their involvement in local planning issues. One such advice note is:

PLANNING ADVICE NOTE 47 - COMMUNITY COUNCILS AND PLANNING

"In all cases, Community Councils are advised to limit their attention to proposals which raise issues of genuine community interest: householder applications will rarely involve issues of this kind."

This means that the PCC, should 'in all cases' be concentrating on community planning issues such as Viridor and the Fun Park development, not the three applications in question, as they clearly fall into the category of 'householder'. Additionally, it is difficult to determine how these applications qualify as an issue "of genuine community interest", given the low number of individual objections each of the applications received. With only seven individual objections received (excluding Group objections from PCC and Portobello Amenity Society) against our initial planning application from the entire population of Portobello, the PCC can hardly claim to be representing a consensus view of the local community, particularly when objections came from only four households who can be classified as neighbours.

Against this background however, the PCC minutes of February 2009 state that **"neighbours of the site in question"**, approached the PCC regarding our application and the PCC then saw fit to unanimously object to our planning application. The fact that neighbours approached the PCC is of little consequence as it is clearly not PCC business and beyond their remit. Furthermore there is a lack of transparency in the PCC minutes as they make no mention of who the neighbours were, or indeed, which member of the PCC was approached. Other more appropriate and well established channels for making objections exist and indeed, immediate neighbours of the site elected to object in writing to the Planning Department and a local Ward Councillor subsequently represented views of his members at two Sub Development Planning Committee meetings. This is right and proper but nothing to do with the PCC.

The City Council's planning process is well established, robust and rigorous and Community Councils are part of that process. Transparency is a key aspect of the Planning process and every neighbour, i.e. occupants and owners of immediately adjacent properties, must receive formal notification of the application. Any objections made thereafter must display the name and address of the objector in order that it is considered and these objections are then made available in the public domain. What steps did the PCC take to ensure the identity and credentials of those making the objections were in fact genuine? Were there written representation from members of the public and if not which members of the council were the verbal representations made to? It is perfectly reasonable to ask the Chairperson

who approached the PCC, whom did they approach and who decided that a PCC objection should be lodged because of the approach? Members of the public are unable to object anonymously and should not be able to use their Community Council to do their bidding.

2. THE ACCURACY OF THE PCC OBSERVATIONS

As a Statutory Consultee, the PCC is in a highly responsible position that demands any lodging of objections to be done only after a full assessment and careful consideration. Clearly if an application does not merit a full discussion of the PCC then it should not merit a response from the PCC. In this instance, having chosen to get involved in a 'household' planning application, the PCC should have taken the time to study the application and ensure that comments made are appropriate. In objecting to the first application made by the Portobello Partnership it appears that the PCC simply regurgitated the reasons the original application was refused without looking at the difference between the two applications, which were significant given that our applications were for a flat roof, single storey dwelling that was no higher than the boundary walls and the original application was for a two storey, slate roof development. In a nutshell the PCC made no objection to Mr Hawkins application, which was rejected on several core planning principles, yet saw fit to object to an application that was granted and supported unanimously by the Dev Sub-Committee. Surely if in future the PCC is going to comment on a planning issue it ought to be accurate in its observations and not seek to prejudice decisions based on inaccurate objections.

3. INCONSISTENT TREATMENT OF APPLICATIONS BY PCC

The PCC decided to object in writing on 3 occasions to both planning applications made by the Portobello Partnership (09/00236/FUL and 09/00900/FUL), while no objections whatsoever were made by the PCC for the first planning application (06/01734/FUL) made by Stephen Hawkins on behalf of Janet Fenton. Several PCC meetings were held over the time taken to process the first planning application but still nothing was raised as a planning issue at any of these meetings. For the avoidance of doubt, all 3 applications relate to exactly the same plot of land and the minutes demonstrate that Mr John Stewart was and still is the main commentator on planning matters for the PCC. Mr Stewart has also played a key role in The Portobello Amenity Society (PAS) over the time span of all three applications and it is noted that PAS did in fact also object to the first planning application.

The PCC minutes of April 2009 confirm the committee's policy with regard to areas of land such as ours in Marlborough Street by stating, **"It is PCC policy to object to this type of development in any conservation area"**, yet this policy was not applied to the application where Mr Hawkins was Agent. In these circumstances it is not unreasonable for a member of the public to assume that the PCC chose to ignore an application made by a then serving member of their committee Mr Stephen Hawkins. For an important local body such as the PCC, it is not enough just to act properly, it has to be seen to act properly, meaning consistency, transparency and accuracy should be of the highest order. Unfortunately it appears that there is one policy for members of PCC and another for ordinary members of the community.

This view is further compounded when the lists of objectors is viewed on the Planning Department's public website. Several individuals who are strongly associated with the Portobello Community Council objected to the application made by the Portobello Partnership but along with the PCC, did not object to the application where Mr Hawkins was agent. These individuals include:

Diana Cairns
Anne Ward

Caroline Hosking
Stephen Hawkins

We recognise the right of any individual to personally object to a planning application but consistent with the PCC in not objecting to the application submitted by Mr Hawkins, this behaviour holds the PCC open to accusations of collusion whether justified or not.

4. COMMUNITY COUNCIL DECISION MAKING

Planning officials granted application 09/00900/FUL and it went before the Sub Development Committee for their approval on 12 August 2009. Councillor Stephen Hawkins attended the meeting and exercised his right as a Ward Councillor to speak against the application. In doing so he informed the Committee members present that he was representing, amongst others, the views of the PCC. Obviously Cllr Hawkins is fully entitled to attend Sub Development Committee meetings for matters in his Ward but there is no PCC minuted record of the Councillor being nominated to represent the PCC at this meeting. This raises the question by whom was he asked to represent the PCC, by whose authority was this granted and why is there no mention of this in the minutes? It is perfectly reasonable to expect clarity on these issues.

THE COMPLAINT IN SUMMARY

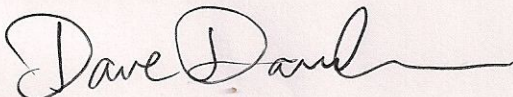
We request a competent response to all of the questions raised and ask that a discussion is held at the next regular meeting of the PCC in accordance with the guidance notes for Community Councils on Dealing with Disputes.

As we have raised many points in the body of our complaint we have summarised some of the key issues for you to address below:

The complaint is that the PCC:

- Objected to Planning applications, which according to PAN 47 are outside their remit.
- Failed to apply their own planning 'policy' consistently by not objecting to an application by a member of the PCC and then objecting to an application for a considerably smaller development on exactly the same site by a member of the public.
- Unanimously objected to a planning application on the basis of anonymous and undocumented representations made by an unknown number of anonymous neighbours.
- Made inaccurate and poorly considered objections.
- Lacked transparency and failed to document a decision to have representation from a local Councillor made on their behalf at a Development Sub- Committee meeting.

Complaint is lodged by



Dave Davidson & Stephen McIntyre
on behalf of

The Portobello Partnership, 230 Portobello High Street Edinburgh EH15 2AU