

SPSO decision report

Case: 201105094, West Lothian Council
Sector: local government
Subject: construction by developers/adoption of roads
Outcome: some upheld, recommendations

Summary

Mr C owns a house which is reached by a lane. The properties on the lane were built before the present council came into existence in 1996. At that time, in readiness for the reorganisation of local government, the former roads authority had sent the council a computer list of public roads, on which the lane was identified as one. Mr C did not know about this when he bought his property in 1997, and does not have a property enquiry certificate (a document produced by a council with information about the status of a property) from the time of his purchase. In 1998 a neighbour (neighbour D) bought a property there. His property enquiry certificate suggested that the lane was a public road, as did a plan he was later sent. In 2011, however, Mr C found out that the council considered that the lane was not a public road, and was unhappy about this.

In response to the complaint, the council said that, by 2004, they had realised that the property enquiry certificate issued to neighbour D was wrong, and had told him and apologised. (This meant that the council considered that the lane was in fact private and that the home-owners had the responsibility of maintaining it.) There was, however, a scheme under which owners could apply to pay half the cost (with the council paying the other half) of bringing a road up to the standard where the council would adopt it (take responsibility for it). This had been raised with the council before, but nothing had come of it. In 2011, Mr C made another enquiry about this, and was given costs but then learned that the council had no money for this in their budget. When Mr C was speaking to other residents about the project, neighbour D had provided a copy of his original 1998 property enquiry certificate. After seeing this, and knowing that the council had been maintaining the road verges etc, Mr C was unhappy with the council's insistence that the lane was private. He pursued this with the council, through solicitors and through a councillor and a Member of the Scottish Parliament.

When he brought the matter to us, we explained that where there is a dispute about status, it is not our role to make a definitive ruling. We did not uphold Mr C's complaints that the council failed to inform him of potential funding options or that they had unreasonably claimed that the lane's inclusion in the council's list of adopted roads was in error. We noted their reasons in support of their stance on this. We did, however, uphold Mr C's complaint that the council failed to follow the correct process to remove the lane from their list of adopted roads. This was because we found there was a lack of transparency about how this happened, and we made a recommendation about this.

Recommendations

We recommended that the council:

- further consider the status of the list passed to them on 27 February 1996 and take such action to regularise the matter as they deem appropriate.
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- Scottish Government and devolved administration
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