

Scottish Public Services Ombudsman Act 2002

Report by the Scottish Public Services Ombudsman of an investigation into a complaint against Falkirk Council

The Complaint

1. This complaint from a firm of solicitors on behalf of their client (Mr N) concerned the local authority's handling of his complaints about breaches in planning control in respect of a site adjacent to his property. In particular the solicitors complained that the authority failed to take appropriate timeous action on the matter or keep them informed.

Statutory Planning Guidelines

2. The Scottish Office Planning Advice Note (PAN 54) on Planning Enforcement, issued in 1999, offers advice on best practice.

3. PAN 54 notes that the policy context for the planning system is set out in National Planning Policy Guideline 1 (NPPG1): The Planning System. The planning system operates to regulate development and the use of land in the public interest. Planning procedures and decisions therefore need to command respect. The key objectives of enforcement are twofold: -

- to remedy undesirable effects of unauthorised development;
- to bring unauthorised activity under control.

4. The general approach to enforcement is set out in Scottish Office Circular 4/1999 - Planning Enforcement: Town and Country Planning (Scotland) Act 1997 - which is referred to in PAN 54.

5. In terms of that Circular, planning authorities should be guided by a number of considerations when deciding whether formal enforcement action is required. Broadly, where the planning authority's assessment clearly indicates that planning permission should be granted for development which has already taken place, the correct approach is to

suggest that a retrospective application (together with the fee) be submitted at once.

6. The Circular states that it is clearly unsatisfactory that anyone should carry out development requiring planning permission, without submitting an application and paying the appropriate fee. Nevertheless, an Enforcement Notice should not normally be issued solely to regularise development which is acceptable on its planning merits, but for which permission has not been sought.

7. According to the Circular, it could be regarded as unreasonable for a planning authority to issue an Enforcement Notice solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the Enforcement Notice. Accordingly, planning authorities who issue a notice in these circumstances run the risk of an award against them of the appellant's costs in the enforcement appeal.

8. PAN 54 indicates that planning authorities have two main investigative powers available for planning enforcement purposes: -

- Section 272 of the Town and Country Planning (Scotland) Act 1997 provides limited powers which enable the authority to obtain information as to interests in land. Two offences may arise from these provisions: -
 - (a) failing to provide information; and
 - (b) furnishing information which is known to be false.
- Section 125 of the Town and Country Planning (Scotland) Act 1997 enables the authority to serve a "Planning Contravention Notice".

The Advice Note explains that the Planning Contravention Notice (PCN) is intended to be the main method by which the planning authority obtains information about allegedly unauthorised development. It supplements the more limited power to require information about interests in land

which Section 272 of the 1997 Act also makes available to planning authorities. It does not comprise enforcement action but it represents the start of formal action which may ultimately lead to enforcement action. As it is a discretionary power, it need not be served before taking enforcement action. The PCN is another means of obtaining information and will frequently lead to discussion and the avoidance of further enforcement action. If enforcement is required, however, the service of a PCN facilitates the accurate serving of subsequent Enforcement Notices. It can also lead to a retrospective planning application for the alleged unauthorised development.

Planning authorities may serve a PCN whenever they suspect a breach of planning control has occurred. They are also empowered to serve a PCN on the owner or occupier of the land in question, on a person with any other interest in the land, or on a person who is using the land or carrying out operations on it.

The recipient of such a Notice is required to respond within a 21 day deadline.

9. PAN 54 includes the following paragraph on complaints to the Local Government Ombudsman: -

“Many investigations of alleged or suspected breaches of planning control result from neighbours’ complaints to the planning authority. It follows that, in deciding whether to take formal enforcement action, the authority must observe decision-making procedures enabling them to satisfy any complainants that whatever decision is eventually taken is well-founded in all respects. Otherwise the complainant would have a good case to complain to the Local Government Ombudsman about alleged maladministration. In other words, where there is evidence of a breach of planning control, there will be maladministration unless the planning authority either solicit an application for planning permission to legitimise the situation, or consider taking enforcement action. In this context, planning authorities will appreciate that it is vital for the authority to maintain a properly documented record of their investigation of each case

and of the reasons why they decided to take, or not to take, enforcement action. The decision not to take enforcement action can be challenged by judicial review and it is therefore important to ensure that a decision not to take enforcement action is also well-founded”.

Background

10. On 13 April 2000 Mr N's solicitors wrote to the Council about their client's concern over a possible breach in planning control on a site adjacent to his property. The Council advised Mr N's solicitors that the works at the site did not comply with the terms of the planning permission granted for the site. They were advised that the Council were in discussion with the owner of the site in an attempt to resolve matters.

11. Mr N's solicitors thereafter approached my predecessor's office in September 2000 (the Commissioner for Local Administration in Scotland - referred to throughout this report as the Commissioner) complaining about the Council's failure to take enforcement action on a breach of planning control at a site adjoining their client's property - which the solicitors contended was being used as an unauthorised scrap yard. They also complained of a failure to reply to their representations on the matter. They complained that while they had written to the Council on 7 June 2000, and had submitted a number of reminders - the last being on 8 September 2000 - the Council had failed to provide a substantive response. They also complained that the Council had failed to keep them advised of progress, or explain the reasons for lack of progress.

12. In response to the Commissioner's enquiry the Council explained that a number of meetings had been held with the owner of the site (Mr N's neighbour) which had resulted in him, in May 2000, agreeing to submit amended plans, with a view to regularising the planning permission previously granted for the site. (An application had been granted for the operation of a vehicle repair workshop, which specified that external areas should only be used for parking vehicles - further applications were granted on 23 December 1999 for the deletion of a previous condition to allow repair and maintenance and storage of vehicles within yard areas, and for the change of use and up filling of agricultural land to form an extension to the existing yard and a vehicle

access.) However, despite a reminder, in August 2000, Mr N's neighbour had failed to submit amended plans and following a further site visit on 2 November 2000 the Council had established that the use of the site to store disused vehicles had extended beyond that which could be considered ancillary to the operation of a vehicle repair workshop.

13. In relation to the issue of non-compliance with the terms of the planning permission granted in 1999 (in respect of the change of use and up filling of agricultural land to form an extension to the existing yard and a vehicle access), Mr N's neighbour had been advised to submit a fresh application to show: -

- the correct site boundary;
- accurately, the way in which the developer wished to develop the site: ie position of new access, extent of yard extension location of screen planting;
- the area within the existing yard which could accommodate visitor parking facilities;
- levels to be formed.

14. It appeared that the site was also being used as a yard for the breaking of motor vehicles - and this use was specifically excluded from any of the classes in the Town and Country Planning (Uses Classes) (Scotland) Act 1997 by article 3(5)(f).

15. The Council explained that Mr N's neighbour had been advised that they intended to initiate enforcement proceedings to ensure the cessation of the unauthorised use of the site as a yard for the breaking of motor vehicles and to have removed from the site all scrap and disused vehicles.

16. The Council accepted shortcomings on their part in failing to respond to Mr N's solicitors' representations - or to provide reasons for lack of progress - and to pursue Mr N's neighbour when he failed to submit amended plans.

17. The Commissioner advised Mr N's solicitors on 7 December 2000 that the Council had apologised for the delay and inconvenience caused to them and that, while he did not condone these failings, given the action taken and in view of the assurances that monitoring of the site would continue and enforcement action would be taken if necessary, he had decided not to continue his involvement. However, he advised the Council that he would reconsider his position if further problems occurred.

18. Mr N's solicitors thereafter wrote to the Commissioner on 6 March 2001 complaining that no positive action in relation to enforcement was being taken.

19. In response to the Commissioner's request for further information, the Council advised that they had been gathering information to enable an Enforcement Notice to be served. They explained that the number of vehicles on site had not justified taking such action, and it had been necessary to obtain evidence to show that Mr N's neighbour had been actively advertising the site as a breakers/salvage yard. With the appearance of two adverts in the local press it was confirmed that sufficient evidence had been obtained to successfully take enforcement proceedings (to ensure the cessation of the use of the site for the breaking of motor vehicles and to take action on the non-compliance with planning permission) and a Notice had been served on 29 March 2001 under Section 272 of the Town and Country Planning (Scotland) Act 1997.

20. In further representations on 8 June 2001, Mr N's solicitors complained that, despite assurances that they would be kept advised of the position, the Council had failed to do this.

21. In response to his informal enquiries, the Council advised the Commissioner that they had formally apologised on 15 June 2001 to Mr N's solicitors for the failure to reply to their correspondence and enclosed a copy of this letter, in which it was noted that the Officer responsible for monitoring the case had just returned from sick leave. The letter also indicated that, in the Officer's absence, work had been progressing to ensure the removal of vehicles and further site visits had been carried out, and that a meeting had taken place on 15 May 2001 with Mr N's neighbour. During this meeting it had been noted that approximately two

thirds of the scrap vehicles had been removed from the site; however concern had been expressed at the rate of progress, and Mr N's neighbour had been requested to remove all remaining broken vehicles and vehicle parts by 18 June 2001. The Council's letter also advised Mr N's solicitors that a report had been prepared authorising the commencement of formal enforcement procedures should that prove to be necessary.

22. In addition the Council indicated that Mr N's solicitors would receive an update on progress immediately after the 18 June expiry date.

23. The Commissioner advised the Council of his disappointment that he had been required to become re-involved in the case, and that while he had decided to take no further action he might review his position if Mr N's solicitors had further cause to complain.

24. In response to the Commissioner's request for an update on 20 September 2001, the Council advised that on 22 June 2001 a site visit had been carried out and additional information had been provided which did not concur with the information given by Mr N's neighbour in response to the S272 Notice issued on 29 March 2001. As a consequence a PCN required to be served on Mr N's neighbour. (A letter advising of the position had been sent to Mr N's solicitors on 28 June 2001.)

25. The Council further advised that during a subsequent site visit on 26 September 2001 it was found that the removal of scrap vehicles had been continuing and progress was being made in respect of other aspects including the formation of a surface access, provision of customer car parking spaces, and screen planting.

Background to Investigation

26. In March 2002 Mr N's solicitors again complained to the Commissioner about the Council's handling of the matter.

27. In response to a further written enquiry, the Council advised that a PCN was served on Mr N's neighbour on 18 October 2001 and a letter informing Mr N's solicitors of the position was issued on 31 October 2001.

28. The Council explained that it was initially thought that this Notice had not been responded to within the required 21 days and it was decided to serve an Enforcement Notice on Mr N's neighbour and two other parties known to the Council to have an interest in the site. An Enforcement Notice requiring the cessation of use of land for the breaking of motor vehicles and the removal of all broken vehicles from the land was issued in January 2002. An appeal was submitted by Mr N's neighbour to the Scottish Ministers before the Notices were due to take effect.

29. Following this, the Council indicated that it was discovered that Mr N's neighbour had in fact responded to the PCN, but that this had been mis-filed due to an error in office procedures. From the information provided in the response to the PCN, it was discovered that the Enforcement Notice had not been served on all parties with an interest in the site. It was decided to withdraw the Notice and Mr N's neighbour and the Reporter's Unit were so advised.

30. The Council accepted that they had failed to keep Mr N's solicitors advised of progress. They explained this was because they had been unsure of Mr N's neighbour's intention in relation to the appeal and because the Planning Enforcement Officer involved in the case had been on extended sick leave. The Council indicated that they intended to proceed with enforcement action.

31. The Commissioner decided that the circumstances of the case warranted formal investigation, and on 8 July 2002 he notified the Council and the complainant's solicitor of his decision to investigate the complaint.

32. An update from the Council received on 10 July commented that following a site inspection on 26 June 2002: -

"the number of broken vehicles and vehicle parts at the site had been sufficiently reduced to the extent that the site does not constitute a yard for the breaking of motor vehicles".

The Council advised that in these circumstances enforcement procedures had been suspended, but the site would continue to be monitored. My

predecessor decided that notwithstanding this update, there were grounds to continue his investigation into the management of the case.

Investigation

33. Mr N's solicitors provided information in writing and at interview with one of my officers; she examined background information supplied by the Council and she discussed the case with appropriate officers of the Planning and Transportation division of the Development Services Department.

Solicitors' Comments

34. Mr N's solicitors explained that their main concern was that the Council had failed to adhere to assurances that they would be kept advised of the position on this case, and that they had been required to pursue the matter formally. In addition, the solicitors stated that when advice was given that Notices were to be issued with a view to taking enforcement action, the Council failed to follow this up with progress reports or to give reasons for the delay in proceeding with the formal action. They indicated that the delay had resulted in their client missing out on the prospective sale of his property.

Officers' Comments

35. Officer C, a Planning Enforcement Officer, was the case officer and had been involved since early 2000. He advised that it was accepted at that time that there was a possible breach of planning control at the site owned by Mr N's neighbour. He felt that there was an escalation of the number of vehicles on the site at this time. He explained that a number of discussions had been held with Mr N's neighbour about the Council's concern that the number of vehicles present was greater than that required for a vehicle repair workshop.

36. Officer C indicated that this was a complex case. Mr N's neighbour had received planning consent to extend the yard and the Council had to ascertain what breaches of planning control had taken place. He explained that the previous consent granted was possibly too restrictive in that it had allowed for the extension of the yard but not for the storage of vehicles. Mr N's neighbour had complained to the Council that he had applied for the storage of vehicles and believed he could store vehicles in

the yard areas. However, Officer C explained that he had not appealed the terms of the consent when it was granted.

37. He further explained that by inviting Mr N's neighbour to submit a new application, in November 2000, the Council's aim was to regularise the position on site and to allow him to store vehicles in the yard to enable him to operate it as a vehicle repair workshop. Nevertheless, the Council had still pursued the issue of the site being used as a scrap yard.

38. Officer C advised that a planning application had not yet been submitted but this matter had not been actively pursued because emphasis had been placed on resolving the enforcement issue.

39. In response to the issue of timescales for dealing with the case, Officer C explained that workload, shortage of staff, staff sickness, and staff changes, all had had an impact on its handling. He felt if there had been a full complement of staff within the department this would have helped. He stressed that there had been difficulties as the Council had received different information throughout the period. The Council were satisfied that Mr N's neighbour had taken action to remove vehicles from the site, and that he should be given time to resolve the matter. He stressed that the Council viewed formal enforcement action as a last resort, and that every attempt should be made to resolve the situation without the need for formal action.

40. In response to being questioned on the need to issue a PCN subsequent to the S272 Notice and the impact this had on timescales for taking enforcement action, he explained that between the issue of the Notices, the Council had been attempting to gather accurate up-to-date information. However, information in respect of the subdivision of the premises had come to light that the Council had not previously been made aware of in reply to the S272 Notice - but had to be taken into account prior to taking any formal action - and this was the reason for the issue of the PCN.

41. Officer C explained that, following the site visit on 26 June 2002, it was decided - given the number of vehicles removed from the site - that it was no longer a site for breaking of vehicles; and it had been noted

from a more recent site visit that further improvements had taken place. He indicated that discussions with Mr N's neighbour were still ongoing in relation to associated matters (landscaping) but that the Council were satisfied with work carried out to the access to the site.

42. He explained that the areas where storage of vehicles would be permitted to allow a vehicle repair workshop to operate had still to be clarified but this would be identified by the new application still to be submitted.

43. In responding to a question about the action taken by the Council in response to my predecessor's initial involvement, Officer C accepted that not all correspondence had been replied to, but he felt Mr N's solicitors had been advised when progress was made.

44. Officer C confirmed that he met with his co-ordinator to discuss work in general. He was not aware of a specific meeting being held following the Commissioner's initial involvement, but he believed that this would have been discussed as part of the department's every day work. (The Council have commented that the Development Control Co-ordinator (Officer E) had regular meetings and discussions with Officer C at which the case was discussed. The Service Quality Manager had also been involved from time to time to monitor progress with the case until enforcement action was taken. The Head of Planning and Transportation also met with Officer C in December 2000 and June 2001 to review progress and authorised the commencement of enforcement action.)

45. As a result of this case, in recognition of the length of time taken to process enforcement cases, Officer C indicated he was more aware of the need to keep third parties informed of progress or otherwise.

46. Officer D, another Planning Enforcement Officer, advised that he had become involved with the case when Officer C had been on sick leave from 28 January to 5 June 2002. He had dealt with urgent correspondence which had included a memo from the legal department concerning the notification received of the appeal submitted by Mr N's neighbour to the Scottish Ministers on the Enforcement Notice. (Commenting further the Council clarified that Officer D had dealt with

priority enforcement cases while Officer C had been on sick leave and that Officer E, Development Control Co-ordinator, had returned from sick leave on a part-time basis on 5 February 2002 and had provided a degree of supervision of the case.)

47. He indicated he had been advised that, due to an error, Mr N's neighbour's reply to the PCN issued in October 2001 had been mis-filed in the Law and Administration Service Department. Officer D stated that it was decided, following discussions with Officer E and G, that in view of information contained within the response to the PCN, to withdraw the Enforcement Notice as not all parties had been served.

48. The Council have clarified the reasons for the delay in serving the PCN. They explained that a memo dated 25 June 2001 had been sent to the Director of Law and Administration requesting that a PCN Notice be served. While this was responded to, due to an error, the response was not received by Development Services. It was not until Development Services requested an update that a copy of the memo was sent to the appropriate section. The PCN was subsequently served on 19 October 2001.

49. Officer D felt the Enforcement Notice should not be re-issued without further input from Officer C. He also visited the site and identified improvements in the condition and visited Officer C at home while he was on sick leave to clarify a number of outstanding issues.

50. Responding to a question about whether he was aware of previous assurances given to Mr N's solicitor that they would be kept advised of progress, he indicated that there was reference to this in the file but it had not been drawn to his attention and he had not been in contact with the solicitors during his involvement in the case.

51. He indicated that, as a result of this case, discussions had been held with other officers on the need to keep third parties advised; procedure documents were to be looked at, including the issue of updates for complainants on enforcement cases.

52. Officer E, Development Control Co-ordinator, explained that he became involved in the case in late 1998. He accepted that things had moved slowly, but said that regular monitoring had taken place and that they seemed to be reaching a point where agreement could be reached; and vehicles were being removed from the site.

53. Officer E was asked to comment on the need to serve more than one Notice and whether this was usual. He indicated that although this was not ideal it did happen on occasion and if it was demonstrated that there were any inadequacies or ambiguities, it would be necessary to serve further Notices. This, however, would only help on occasion. He stressed that it was important that any Enforcement Notice served was correct.

54. Commenting on the handling of the case, Officer E indicated that he felt that the timescales involved in this case were affected by staff vacancies; the Department had not had a full complement of personnel, staff had left and there were absences which had included staff with detailed background knowledge of the case.

55. He explained that an Audit of the Department had been carried out by the Scottish Executive, although the focus of the Audit had not been on enforcement. He indicated that changes had been introduced before the Audit, also that further service improvements and changes in procedures had been undertaken and continue to be undertaken.

56. Officer F, Development Control Manager, indicated that normally he would only become involved in the detailed aspects where the Development Control Co-ordinator, ie the immediate line manager, considered there to be a problem that required senior management input.

57. Officer F explained that a new computer system was to be introduced. One of the criteria for the new computer system would be that it would assist in the monitoring of cases, and would look at the need to keep complainants advised.

58. He explained that as part of the Scottish Executive's Audit, routine clerical/administration tasks were being delegated to the Administration

Team. However, these tasks do not involve monitoring enforcement cases, the responsibility for which still remains with the relevant Enforcement Officers. He explained that the Department had undergone a period of change, however, things had now settled down.

59. Officer G, a solicitor within the Law and Administration Services Department, was responsible for the issue of the Enforcement Notices on the instructions of the Enforcement Officers.

60. Responding to a question on the length of time involved in this case, she explained there had been difficulty in establishing if Mr N's neighbour's site was a scrap yard. She added that substantial evidence was required before the Council could proceed to formal action. She felt that this was a complicated case, given that Mr N's neighbour had stated that he had received permission for storage of vehicles. There had been difficulty also in establishing whether vehicles at the site were being repaired or were being scrapped. She had looked at Case Law to help deal with the matter but without much success.

61. She explained that a response to a PCN issued in October 2001 had been received and confirmed that it had been filed, in error, in the General Planning file in Law and Administration without being referred to her. She was not aware of any procedural changes to ensure there was not a recurrence; however management were aware of the matter.

62. Officer H, Head of Planning and Transportation, explained that she had become involved when Mr N had made a formal complaint to the Commissioner. She was aware that the authority's Liaison Officer had been monitoring the case after the Commissioner's initial involvement. Updates had been provided; however these ceased when the Liaison Officer left the authority and the post had not been filled. She felt Mr N's solicitors could have contacted the authority to ascertain progress, and that it was not useful to advise a complainant if nothing was happening. She stressed that progress was being made on the case, and that a good outcome had been achieved although she agreed that perhaps things could have worked more smoothly.

63. In her experience, enforcement cases could be dealt with quickly or could take years to resolve. She stressed that the authority took enforcement very seriously, and that they tried to negotiate rather than taking formal action. She felt that staff shortages had not helped but this issue had been resolved. She indicated that staff sickness and lack of continuity, also lack of knowledge of how long staff are to be off, was not ideal. (The Council have now further commented that both officers who were on extended sick leave over this period were signed off for relatively short periods which were then extended at regular intervals. This uncertainty created difficulties in planning for and managing absence cover over lengthy periods.)

64. Officer H advised that the procedures had been reviewed, and that the Development Control Unit now had a full complement of staff, plus temporary contracts had been given to two students (now qualified), who could be moved to areas where they were required.

65. She indicated that the filling of posts had been difficult and that, for a considerable period, the Development Control Unit had experienced a lot of changes in staff and a high workload but it had now reached a point where there was stability. She stressed that resources were directed to where they were most needed, including enforcement cases.

66. As a result of a Scottish Executive Audit, an Action Plan had been prepared, and one result of the Audit was that routine administrative functions had been removed from planning staff. She indicated, however, that more work was required on the Enforcement Service Review.

67. Her views on the case accorded with those of the other officers who were interviewed with regard to the action taken by Mr N's neighbour to clear the site and that currently there was no need to pursue enforcement proceedings. She commented also that - although monitoring of the site would continue - the requirement for a planning application to allow the parking of vehicles within the extended yard was still to be pursued. Also that discussions would continue in respect of the issue of landscaping.

Complainant's View

68. During a visit to the location the complainant indicated that the site had improved and was still improving, and that while there were still scrap motor vehicles these were no longer being stacked. He was, however, aggrieved at the length of time taken to get to this position. He indicated that he had first raised his concern with the Council through his solicitor, in April 2000 and it still remained unresolved (in 2003).

69. He explained that although there had been improvements he still had concerns that vehicles were being stored in areas not designated for storage; and that the access and landscaping works had not been completed.

70. The complainant also stated that he had not formally advertised his property for sale, but he had received a verbal offer to buy his property. He complained that this offer had not progressed as a result of the lack of improvement in the condition at the neighbouring site. (Mr N's solicitors have provided a copy of a letter from the solicitors acting for the potential purchaser which indicated that the verbal offer had been withdrawn due to the lack of improvement in the condition at the neighbouring site.)

Addendum

71. The Council have stated that at no point did Mr N's solicitors either advise the Council about the potential sale of his property, or of any problem in it being progressed due to the condition of the neighbouring site.

72. Commenting on the current position, the Council have advised that further discussions have been held with Mr N's neighbour, and it is understood that he is proposing to submit a letter requesting a variation of planning permission granted in 1999.

Conclusions

73. When Mr N's solicitors approached the Council in June 2000 they were given the clear impression that the Council accepted that there had been a breach of planning permission and that action would be taken by them to resolve the situation. They also, understandably, expected to be kept advised of progress. In these circumstances it was incumbent on the local authority to ensure that proper action was taken in an effort to

regularise the planning position on site and to ensure the solicitors were kept informed of progress.

74. It is apparent that between May 2000 and March 2001 a number of site inspections were carried out by the Council and that some action was being taken by Mr N's neighbour to improve the situation. Nevertheless, the Council have confirmed that they still considered it necessary to invoke the statutory powers available to them to gather information to enable them to commence formal enforcement proceedings. My investigation has established, however, that there were serious shortcomings in the Council's procedures.

75. In this regard while a 272 Notice was issued in March 2001 a PCN was only issued in October 2001 to obtain the information the Council required to proceed with formal enforcement action. It has been established that although a memo was issued to the Director of Law and Administration in June 2001 requesting that a PCN be served, the response from the Director of Law and Administration was not received by Development Services. This was compounded by the fact that the situation was not identified until some months later and in turn led to the significant delay in the issue of the PCN. In addition, due to a further error, the response to the PCN was mis-filed, which resulted in the issue of an Enforcement Notice which subsequently had to be withdrawn when it was realised that a response to the PCN providing relevant information had in fact been received.

76. While the Council have stated that, due to action taken on site, consideration to taking further enforcement action was then suspended in June 2002, this was some two years after the complainant first raised the matter with the Council. I do not believe that this is the timescale which the solicitors envisaged when they first contacted the Council and I consider the errors which occurred in the processing of the statutory notices contributed to the extensive timescale. I consider these errors amount to maladministration. To this extent I would recommend that the authority review their procedures for dealing with correspondence and internal mail.

77. Turning to the complainant's concern that he was not kept advised of the position. The Council apologised to Mr N's solicitors on a number of occasions between November 2000 and June 2002 for their failure to keep them advised; however, it is clear that the complainant was, in effect, left 'in the dark' for long periods of time, and this resulted in his experiencing a loss of confidence in the planning service. I believe that the facts in this case point to an unsatisfactory level of communication between the authority and the complainant. I consider that the complainant's expectations, in view of the earlier advice given by the authority, were not met.

78. I regard these shortcomings as maladministration from which the complainant suffered injustice, in that he did not receive the standard of service to which he was entitled, and he witnessed what appeared to him to be a failure on the part of the authority to control unauthorised development. In addition Mr N's expectations that he would be able to sell his property as a result of the verbal offer he had received were also not met and it is clear that he considers this was due to the condition of the neighbouring site.

79. To remedy the injustice to the complainant I believe that the Council should offer him a formal apology over their handling of this matter and make him a payment of compensation of £750 in respect of the time and trouble to which he was put.

80. Notwithstanding my findings, I do believe the Council were attempting through informal means to resolve the situation. I recognise that the Development Control Unit was under-strength for periods during the handling of the enforcement action, and that the Council has taken action to address this. I would recommend that they reinforce the action taken by reviewing the monitoring of enforcement cases.

81. I also recommend that the authority take urgent action to ensure the compliance with planning consent on site.

Professor Alice Brown
Scottish Public Services Ombudsman

31 July 2003

