

## Scottish Parliament Region: Mid-Scotland and Fife

### Case 200500402: Fife Council

#### Introduction

1. On 10 May 2005 the Ombudsman received a complaint from a member of the Scottish Parliament (MSP) on behalf of her constituent, Mr C. She complained of the way in which Fife Council (the Council) dealt with Mr C's requests to buy land to allow him to create a vehicular access and also to increase the size of his garden.

2. The complaints from the MSP which I have investigated concerned:

(a) her allegation that Mr C's application for vehicular access to the front of his house took longer to conclude than was necessary because of contradictory information being issued by the Council and that, as a consequence of this, Mr C was put to unnecessary expense as he felt obliged to retain solicitors to act on his behalf; and

(b) her beliefs that there were delays and confusion in the way in which the Council dealt with her constituent's request to purchase land to the rear and the side of his property. She says that initially Council officers were agreed to the sale of part of the ground, as was a local councillor, but that as Mr C's neighbour objected to the impact of the proposed sale of the ground, it was subsequently refused.

3. Following the investigation of all aspects of this complaint I came to the following conclusions:

(a) not upheld, see paragraphs 6 to 18;

(b) not upheld, see paragraphs 19 to 26.

4. While there were periods of delay in the way in which the Council dealt with this complaint, these had been acknowledged and addressed prior to the complaint being raised with the Ombudsman. Apologies had been made. In the circumstances, no further action is required.

### **Investigation and findings of fact**

5. The investigation of this complaint involved obtaining and reading all the relevant documentation, including the correspondence between the Council, the MSP, Mr C and his solicitors. I have also seen plans of the area concerned, as well as various internal memoranda expressing officers' views on the sale of the land. I made a written enquiry of the Council on 13 October 2005 and received their detailed reply on 10 November 2005. I have set out my findings of fact and a conclusion for both heads of complaint. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. The MSP, Mr C and the Council have had an opportunity to comment on a draft of this report.

#### **a) Her allegation that Mr C's application for vehicular access to the front of his house took longer to conclude than was necessary because of contradictory information being issued by the Council and that, as a consequence of this, Mr C was put to unnecessary expense as he felt obliged to retain solicitors to act on his behalf**

6. Mr C first made an application to form a vehicular access in 1996 but he was told in 1997 that the Council did not wish to sell the land concerned. Further applications, which were again refused, were made in 1998 and 2001. The application about which this investigation is concerned was made in 2002.

7. It appears that, on the basis that there were no objections from Grounds Maintenance, the Head of Housing began making arrangements for the Council to grant Feu Superior's consent to enable Mr C to erect a garage and form a driveway for vehicular access. At that time, the Head of Housing acknowledged that the matter had proved troublesome and apologised for this. Subsequently, the Council's Legal Department advised Mr C's solicitors in September 2002 that this permission was a personal right terminating at a future sale of the property. However, the solicitors were advised that there was a possibility of purchasing a formal servitude right subject to conditions.

8. Three months later, on 5 December 2002, an Estates Technician confirmed this, and what he believed to be the Head of Housing's, understanding that the right of access would be a personal one only. He then followed this up with another letter, on 18 December 2002, saying that, while there were no problems in obtaining a personal access, it would be possible to obtain a formal servitude right but that there would be costs involved. This appeared to be more or less the position as stated three months earlier by a

Council solicitor.

9. On 6 January 2003, Mr C's solicitors advised the Council that his client wished to obtain a formal servitude right for which he agreed to pay. However, when the Estates Technician replied on 13 March 2003, he appeared to be offering Mr C, in return for a fee, a servitude right which would be limited to his personal use. This did not appear to reflect the terms of his earlier correspondence (of 18 December 2002) or to be in line with Mr C's wishes as confirmed by his solicitors' letter of 6 January 2003.

10. On 8 April 2003, Mr C's solicitors wrote to the Council again saying that Mr C wanted the matter to progress as agreed in December 2002.

11. On 14 May 2003, the Council, in a letter to Mr C's solicitors, confirmed acceptance of a formal servitude right. They also apologised for the delays which had happened.

12. Thereafter, on 1 July 2003 a draft deed of servitude was sent to Mr C's solicitors for their approval. The solicitors replied on 10 July 2003 raising, for the first time, the question of a restriction contained in Mr C's title and the fact that the deed of servitude did not deal with this. The Legal Department wrote a few days later requesting a copy of the appropriate title and asking for a draft minute of waiver of the relevant title restriction for revisal.

13. Despite two reminders, a reply was not received from the solicitors until 5 January 2004 accepting the deed of servitude sent to them on 1 July 2003. The Legal Department replied the next day, confirming that the deed of servitude was being signed but again requested the draft minute of waiver. A response was received by return to the effect that the solicitors no longer required a minute of waiver to the title restriction.

14. The Council noted the situation and requested settlement and appropriate funds were received from Mr C's solicitors. On 21 January 2004, the Council acknowledged receipt of the cheque and forwarded the signed deed of servitude to Mr C's solicitors.

15. In the progress of Mr C's application to create a vehicular access, there are two clear periods where matters stalled. Mr C's solicitors advised the Council by letter of 6 January 2003 that he wished to obtain a formal servitude

right of access and would be willing to pay the necessary costs. However, it was not until 14 May 2003 that the Council wrote to Mr C to confirm acceptance and instructed that a formal offer be made. In the same letter, they apologised for the delay in responding to Mr C.

16. A draft was sent to Mr C's solicitors on 1 July 2003 but it was not until 5 January 2004 that the solicitors confirmed it was acceptable.

17. There is no doubt that there were delays in progressing the vehicular access and, while five months of that was the responsibility of the Council, six months was due to Mr C's legal representatives.

18. While the Council did take too long to respond to Mr C, they have apologised for this. I cannot conclude that Mr C was put to unnecessary expense because he felt obliged to instruct solicitors. Mr C had engaged solicitors to act for him from the outset. I, therefore, do not uphold this aspect of the complaint.

**(b) Her beliefs that there were delays and confusion in the way in which the Council dealt with her constituent's request to purchase land to the rear and the side of his property. She says that initially Council officers were agreed to the sale of part of the ground, as was a local councillor, but that as Mr C's neighbour objected to the impact of the proposed sale of the ground, it was subsequently refused**

19. In January 2001, Mr C began to pursue his request to extend his garden ground. At that point, while Transportation indicated they had no objections, Community Services were against the sale and highlighted the possible distress the sale could cause Mr C's neighbour. A letter was sent by the Estates Technician to Mr C on 20 July 2001 advising of the situation and apologising for the delay in getting back to him, but saying that he had inherited Mr C's request to buy the land from another officer who no longer worked with the Council. He referred to previous telephone conversations and said that the matter had raised several questions which may require further information. He advised Mr C that the Area Planning Manager was not in favour of selling the land because of the effects of the 'disproportionment of ground' in relation to other properties. Similarly, the Area Housing Manager had concerns about this and about Mr C's proposals for future use. It was pointed out that, in the interests of fairness, Mr C's neighbour should also be given the opportunity to register any interest in the land.

20. Progress then appears to have halted and it was not until 9 January 2003 that, in accordance with the Council's usual policy, the Estates Technician sought the views of Heads of Service and the current local member. He did so with the benefit of a plan. As the ground was immediately to the rear of Mr C's neighbour's garden, they also asked the neighbour's opinion.

21. At this point, the Housing and Community Services Departments reiterated their objections to the sale as did the neighbour and the local councillor. Transportation had no comments to make and a reply was not received from Planning and Building Control.

22. On 11 March 2003 Mr C was told that, as the Council did not feel that the land requested formed a natural extension to his garden ground and because agreement would result in a disproportionate amount of ground being conveyed to him, his request to purchase the land was refused.

23. On 28 July 2004, an MSP wrote to the Council about delays in handling Mr C's request. As a result of this, the Chief Executive of the Council wrote to Mr C on 19 August 2004. In this letter, he apologised for the delays.

24. It is clear to me that matters did not progress as they should have done and to some extent this was due to a change in personnel within the Council. It was only on 9 January 2003 that matters came back on track with the councillor's, neighbour's and officers' views being sought. On the basis of those views Mr C's request was turned down and he was informed of the decision on 11 March 2003.

25. While the MSP is of the view that the Council's consideration of Mr C's request was confused, I do not agree. The letter seeking views on Mr C's request was accompanied by a map delineating the area of ground Mr C wanted primarily and showing the other area in which he had also expressed an interest. Essentially, I believe Mr C is aggrieved with the Council's decision to refuse his request. However, appropriate views were sought in accordance with the Council's usual procedures. The replies received were not in Mr C's favour and his request was turned down.

26. In considering this matter, it must be remembered that the Council are under no obligation to sell land in their ownership to a third party. Nevertheless,

they agreed to consider Mr C's request and consulted on it. Although their progress was slower than it needed to have been, I cannot conclude that their lack of speed caused confusion or led to a perverse decision. The Council have already apologised for their delays in their letter to Mr C dated 19 August 2004. In all the circumstances, I do not uphold this complaint.

30 May 2006

**Explanation of abbreviations used**

The MSP

The complainant

Mr C

The aggrieved person

The Council

Fife Council