

## Scottish Parliament Region: South of Scotland

### Case 200402347: South Ayrshire Council

#### Introduction

1. On 12 August 2005 the Ombudsman received confirmation from the Secretary of Tarbolton Tenants and Residents Association (the Association) that Councillor C had been asked to pursue a complaint on their behalf against South Ayrshire Council (the Council). Their complaint was that the Council had attempted to influence the outcome of a Public Local Inquiry.

2. The complaints raised on behalf of the Association by Councillor C which I have investigated concerned:

- (a) expressing views at a Public Local Inquiry which were not Council policy; and
- (b) failure to consult properly on proposals to move Tarbolton Nursery School into Tarbolton Primary School.

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

- (a) not upheld, see paragraphs 11;
- (b) not upheld, see paragraphs 18.

#### **(a) Investigation and findings of fact**

4. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Councillor C and the Council. I have also had sight of documentation relating to a similar complaint against the same authority, together with internal reports relating to South Ayrshire Schools Estate Public Private Partnership (PPP) dated 4 September 2002; the Council's response to proposed housing developments in areas including Tarbolton, dated 15 December 2004; a report by the Director of Education, Culture and Lifelong Learning (ECLL) dated 16 March 2005, concerning a proposal to

relocate and re-designate Tarbolton Nursery School; a subsequent consultation document relating to that proposal; advertisements concerning the proposal inviting representations and giving the date of public meetings and the Education (Publication and Consultation etc) (Scotland) Regulations 1981 and Amended Regulations 1987, 1988 and 1989. Written enquiries were made of the Council on 19 August and 11 November 2005 and responses were received dated 15 September and 25 November 2005.

5. I have set out my findings and conclusions below and, although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Councillor C, on behalf of the Association, and the Council have been given an opportunity to comment on a draft of this report.

**(a) Expressing views at a Public Local Inquiry which were not Council policy.**

6. On 24 August 2004, a Local Public Inquiry began to consider proposed housing developments in the area, including in Tarbolton. Councillor C was in attendance on behalf of local residents to represent their view that the Local Plan was not sufficiently ambitious and that more land should be released, allowing more houses to be built. Their view was that local services, including the primary school, could support such growth. Councillor C said that he was then surprised to receive a copy of a report prepared for the Inquiry Reporter by the Department of ECLL, dated 15 December 2005. Amongst other things, the report made reference to the Council 'currently reviewing the accommodation at the school and it is likely that the capacity of the school will be reduced'. Councillor C maintained that there was no such policy and that by presenting this information the Council were clearly attempting to influence the outcome of the Inquiry.

7. From documents available to me, I am aware that at a special Council meeting on 12 December 2001 members agreed to submit an outline business case to the Scottish Executive for a PPP in relation to the South Ayrshire Schools Estate. The Council's proposals in connection with this included the proposal to relocate Tarbolton Nursery School into Tarbolton Primary School and create a nursery class. This was subsequently advertised to the public with a meeting being held on 12 February 2003. On 6 March 2003, after consultation, the Council's Policy and Resources Sub Committee approved the outline business case.

8. In their response, dated 15 September 2005, the Council advised me that, in the course of developing their Capital PPP programme, it became clear that developers were reluctant to take on refurbishments and that this was being reflected in the costs quoted. The Council said that they, therefore, formed the view that refurbishing schools under PPP did not represent Best Value and that traditional procurement methods were more appropriate. The Policy and Resources Committee then dropped the Tarbolton project, which had been designated as a refurbishment project, from the PPP package on 11 February 2004. However, the documents considered by the Policy and Resources Committee, which I have seen, made it clear that, although the Tarbolton project was no longer in the PPP programme, the principal aim of rationalising the accommodation (by accommodating Tarbolton Nursery School into Tarbolton Primary School) still remained Council policy.

9. Therefore, while the Council made changes to the procurement process, they said they did not amend their decision to rationalise educational accommodation at Tarbolton and they continued to move this policy forward.

10. The Public Local Inquiry began on 24 August 2004 and in December 2005 (paragraph 6 above) the ECLL's report to the Local Inquiry indicated that Tarbolton Primary School was likely to experience problems accommodating new pupils from 436 projected new houses. The Council's view was that, although the Association's objections to the Local Plan were based on notional housing figures of 100 to 436 houses, they had to base their views on a worse case scenario figure of 436 and the resultant education implications.

*(a) Expressing views at a Public Local Inquiry which were not Council policy:  
Conclusion*

11. Councillor C and the Association took the view that the report presented to the Local Inquiry did not represent council policy, but I disagree. It is clear to me that, from at least 2001, it was the Council's strategy to relocate and re-designate Tarbolton Nursery. Council minutes and reports available to me back this up. Whether or not Councillor C and the Association were in agreement with the merits of this policy is another matter and not one for investigation by this office. Accordingly, I do not uphold this complaint.

**(b) Failure to consult properly on proposals to move Tarbolton Nursery School into Tarbolton Primary School**

12. I have had sight of the correspondence between Councillor C and the Director of ECLL, also with the Depute Chief Executive. I acknowledge that Councillor C held strong opinions about this matter. He was against the proposals to relocate and re-designate the Nursery School, despite the fact that the Council said that this was their stated policy since at least the end of 2001. I am satisfied that this was indeed the case (paragraphs 6 to 10 above).

13. The Council continued to move their proposal to relocate and re-designate the Nursery School forward, and in doing so, they were required to undertake a statutory consultation exercise. A consultation document was drafted by ECLL. Political approval to consult was given on 16 March 2005 and in accordance with the Education (Publication and Consultation etc) (Scotland) Regulations 1981 and Amended Regulations 1987, 1988 and 1989, the proposals were advertised in the press. A public meeting was scheduled for 12 April 2005 and written representations were invited by 20 April 2005.

14. However, the Director of ECLL, in consultation with the Convenor of the Lifelong Learning Committee, decided not to proceed with the consultation process on the timescale originally envisaged because of conditions which applied locally. (Councillor C had raised a number of issues locally and the hope was that the Council could have resolved these before completing the consultative exercise.) It was the Director's view that when more reflective conditions applied it would be appropriate to begin again. The consultation process was eventually extended to 7 October 2005.

15. Councillor C and the Association were unhappy with this, particularly as the Public Local Inquiry was still running. They considered that both matters should have been dealt with in isolation and that the consultation on Tarbolton Nursery and Primary Schools should have taken place after a decision was reached on the Inquiry.

16. I am not persuaded by this argument. The Public inquiry began on 24 August 2004, three years after the Council first publicised their intentions with regard to

Tarbolton Nursery School. The continuation of that policy led them to start a consultation process in accordance with the relevant legislation and I have seen no evidence to suggest to me that those procedures were faulty. There is no doubt that the Council were aware of local opinion and I have had sight of a report to the Lifelong Learning Committee dated 7 December 2005 which noted that 63 responses were made by people other than those covered by the consultation regulations, together with a 726 signature petition. All these documents were available to members of the Committee.

17. The Council has a very broad duty to the public and this was spelled out to them in advice from the Scottish Executive sent to all local authorities on 30 September 2004. In particular, the advice stated that: 'Among other statutory duties, authorities have to make adequate and efficient provision of school education in their area. That requires them often to look at issues from a somewhat different perspective from that of parents and local communities. An authority's responsibilities cover the whole of its area, whereas the focus of parents or the local community is, quite understandably, on their local school at a particular point in time.' I am satisfied that in relation to Tarbolton School and Nursery the Council have acted in accordance with this advice.

*(b) Failure to consult properly on proposals to move Tarbolton Nursery School into Tarbolton Primary School: Conclusion*

18. Feelings in the community were high and it is clear that neither the Association nor Councillor C liked the Council's proposals, but this difference of opinion does not amount to an allegation of maladministration or an example of service failure. The authority did not meet its initial deadline for the consultation process, but in fact timescales were extended. Arguably, more time was given to make representations and I have not seen evidence that the Council failed to consult properly. In the circumstances, I do not uphold the complaint.

**Further Action**

19. While the draft of this report was with Councillor C and the Council for comment, Councillors met to consider the proposal to relocate Tarbolton Nursery. They voted against it and Councillor C then wrote asking to withdraw the complaint. Although noting his comments, after deliberation it was decided to proceed and make a report. The reasons were that the investigation process had

largely been completed, and it was considered to be in the public interest to show that procedures were in place and that they had been followed.

27 June 2006

**Explanation of abbreviations used**

Councillor C	The complainant
The Council	South Ayrshire Council
ECLL	Education, Culture and Lifelong Learning
PPP	Public Private Partnership
The Association	Tarbolton Tenants and Residents Association