

Scottish Parliament Region: West of Scotland

Case 200501775: Bridgewater Housing Association Ltd

Summary of Investigation

Category

Housing Association: Estate Management

Overview

The complainant (Mr C) sought permission from Bridgewater Housing Association (the Association) to remove a bollard erected on a landscaped area at the rear of his home and to obtain a right of access or wayleave in order that he could park his car in his rear garden. Mr C's requests were considered but refused on policy grounds. The investigation found no evidence of maladministration or service failure.

Specific complaints and conclusions

The complaints from Mr C which I have investigated are that the Association:

- (a) were acting unreasonably in not having a discretionary policy to consider requests for vehicular footpath crossovers (*not upheld*);
- (b) were not acting reasonably by refusing to permit him to purchase the small landscape area to enable him to take access to park his car in his rear garden (*not upheld*); and
- (c) had through their solicitors, threatened him with legal action but had turned a blind eye to others (*not upheld*).

Redress and recommendation

The Ombudsman had no recommendation to make.

The Ombudsman was pleased to note that the Association planned a wholesale review of their policy within the current financial year.

Main Investigation Report

Introduction

1. A complaint was received in the Ombudsman's office on 4 October 2005 from the complainant (Mr C). Soon after purchasing his house in November 2003, he sought permission from the Association to remove a bollard on a landscaped area of granite setts between his garden and the carriageway of the road and to cross the area with his car to park off road in his rear garden. Following the refusal of his requests he subsequently made alterations to his property and to the bollard. The Association, on learning of this, instructed their solicitors to write to Mr C on 17 August 2005 threatening Mr C with legal action if he continued to take vehicular access over the landscaped area. Mr C was aggrieved at this and pursued his complaint through the Association's complaints procedures.

2. The complaints from Mr C which I have investigated are that the Association:
- (a) were acting unreasonably in not having a discretionary policy to consider requests for vehicular footpath crossovers;
 - (b) were not acting reasonably by refusing to permit him to purchase the small landscape area to enable him to take access to park his car in his rear garden; and
 - (c) had, through their solicitors, threatened him with legal action but had turned a blind eye to others.

Investigation

3. Mr C bought his house in November 2003. The house, situated in a cul de sac, was formerly owned by Scottish Homes. Their houses are now managed by the Association. Mr C's rear garden is separated from the roadway by an area of granite setts, measuring about 1.2 metres by 3 metres.

4. In early 2004, Mr C made a request to the Association to have a bollard outside his house relocated to enable him to develop a driveway within his garden and enable him to park his car off road. The request was refused orally.

5. On 16 April 2004, Mr C wrote to the Director of the Association (the Director) expressing his disappointment at the refusal of his request and at the Association's intention to build fences on either side of the road to prevent parking on

pavements. He expressed the view that acceding to his request would go some way to alleviating the difficult parking situation in the cul de sac. Mr C was also aggrieved at the attitude of the Association officer whom he said had told him he should have thought about the parking situation before he bought his house. He felt he was being discriminated against and argued that the Association should place bollards all along the cul de sac or have double yellow lines marked on the road to encourage use of the designated car parking areas.

6. The Director responded on 10 May 2004 apologising for not acknowledging the complainant's letter within the Association's publicised timescale. He stated that he had asked the Association's Technical Services Manager (Officer 1), who had instructed the installation of the bollard, to look at the matter again. The Director considered that matters might best be taken forward at a site meeting with Officer 1. The Director expressed his surprise to learn of Mr C's remarks about the attitude of staff and stated that this would be pursued further by Officer 1. The Director provided Mr C with a copy of the Association's Service Charter and complaints procedure.

7. Officer 1 met with Mr C on site and confirmed the outcome in a letter of 17 May 2004. He explained that the bollard had been erected at the request of a previous occupant of Mr C's house in response to problems arising from other residents using the area of granite setts for parking. Officer 1 said he did not propose to remove the bollard as this would lead to recurrence of the problem.

8. Officer 1 stated that the Association did not normally grant residents a right of access over areas of common landscaping and had consistently refused all applications of this type except where access was being improved for a disabled person. Officer 1 said that if Mr C's request was granted it would set a precedent and would be detrimental to the amenity of the area. He, therefore, refused Mr C's request for a right of access over the area of setts. Mr C was advised that he had a right of appeal to the Director.

9. Mr C appealed to the Director in a letter of 22 June 2004. He referred to a large number of properties in the town where cement slabs or concrete had been laid over common landscaped areas to enable residents to gain access to their gardens and where areas of common landscape were used to park cars. He

assumed the Association were turning a blind eye to this and questioned whether those occupants had sought the Association's permission. He did not consider the granting of permission to him would open the floodgates since many people were already doing what he was seeking. He believed that granting him permission would alleviate congestion in the cul de sac. He considered that his case should be looked at individually based on reasonableness and not on precedent. The Director replied on 22 June 2004 indicating he agreed with Officer 1 and explained again why the request had been refused.

10. Mr C wrote again to Officer 1 in February 2005 requesting permission for a right of access and offering to contribute towards the cost of lowering the kerb. The request was refused by Officer 1 in a letter of 10 March 2005. Mr C, thereafter, made alterations to his back garden area.

11. On 17 August 2005, solicitors for the Association wrote to Mr C, noting that a driveway had been created. The solicitors understood from the Association that Mr C was taking access to his garden over an area of ground owned by the Association over which he had no formal right of access. The solicitors advised him that he should cease taking any further access over the Association's ground with immediate effect. Additionally, he should reinstate any property belonging to the Association to its original condition. The solicitors threatened Mr C with court action if he failed to act within two weeks.

12. On 29 August 2005, Mr C's solicitors wrote to the Director stating that his proposal was aimed at alleviating congestion and was supported by his local Renfrewshire Councillor. The solicitors expressed concern that a very large number of houses in the area had constructed driveways in the rear of their properties without action being taken by the Association. Photographs of five properties were enclosed. Mr C's solicitors claimed that the Association were discriminating against Mr C because he had made a proper approach while other owners in similar circumstances were being allowed to persist.

13. The Association's solicitors replied on 5 September 2005 stating that it was at the Association's discretion whether consent was granted. In their view, quoting other examples where owners in the area take vehicular access to their own property did not require the Association to give consent to Mr C. The Association

had investigated the five examples. The majority of the five were taking access over local authority footpaths and no Association property was involved. Two owners parked on areas of hard standing specifically intended for that purpose and were designated as such in the owners' title deeds. The solicitors conceded that in one case the owner might cross a small portion of footpath owned by the Association but the Association's footpath abutted a local authority footpath at this point. They stated that the Association would write to the owner and instruct him to stop driving over the Association footpath if he was presently so doing. The solicitors confirmed that it was the Association's policy not to grant rights of access over footpaths or amenity areas owned by the Association. They maintained that Mr C's application for consent had been dealt with consistently with that policy. The solicitors requested that Mr C discontinue taking access, failing which proceedings would commence against him.

14. On 26 September 2005, Mr C wrote to the Ombudsman complaining that the Association had not treated him fairly and equally. He considered their decision to refuse him access was unreasonable because they:

- (a) refused him permission on grounds of policy without providing him with a copy of the policy (he pointed out that the local authority granted permission for pavement crossovers for a small fee);
- (b) would not allow him to purchase the piece of land, as they maintain it is part of their assets;
- (c) threatened him for taking access to his garden over an area of ground which is owned by them; and
- (d) disputed that other residents parked on their property, yet his next door neighbour parked every day on the cobbled pathway and he also took his motor bike across the pathway into a shed. It was evident that a number of other residents were parking on Association property elsewhere.

15. Mr C was advised by me to go through the Association's complaints procedure. Mr C pursued his complaint through the three stages of the Association's complaints procedure and after the Management Committee had considered the matter on 26 January 2006, Mr C received a final reply from the Association's Chairperson in a letter of 9 February 2006. She saw the complaint as having three aspects, namely, (a) the decision to refuse permission for Mr C to create a vehicular access to his garden by driving over hard landscaping owned by

the Association; (b) alleged inconsistency by Association staff in dealing with similar requests from other people; and (c) a suggestion that Association staff were harassing Mr C.

(a) Decision to Refuse Permission

The Chairperson stated that the issue of opening up fencing to create access is one which the Management Committee had previously discussed, but had consistently taken the view that this is not something they wished to encourage. The Scottish Special Housing Association (SSHA) as original owners did not envisage the need for 'off road' parking in gardens, and their successors, Scottish Homes and Communities Scotland consistently refused permission for tenants and owners to create driveways especially where this meant crossing land owned by the landlord. The Association had adopted the view that landscaping which was created for the benefit of everyone should not be utilised by only a small number of individuals. While granting permission on a one off basis would have little impact the 'knock on' effect could significantly adversely affect the amenity of the town. In addition, the Association did not have the resources to carry out the necessary consultation with other residents, the risk assessments to determine any safety issues, the development of technical specifications to ensure that any building work is satisfactory, the monitoring of any work to ensure that it complies with the Association specification, an impact assessment on the general amenity or on any additional maintenance, in conveying or agreeing to a wayleave to the prospective owner. The Management Committee believed that, in refusing Mr C's request, staff acted in compliance with the wishes of the Management Committee and established policy and practice.

(b) Consistency of Decision-making

The Chairperson noted that Mr C cited a number of occasions where he believed that the Association had taken a different view to similar requests. She noted that most of these cases related to land which is not owned by the Association. While Mr C had pointed to the local Council taking a different view, it was for the Council to determine what their policy should be and the Association was not in any way bound by the Council's policy. The Management Committee did not accept that the Association had been inconsistent in its approach to Mr C's request.

(c) Harassment

The Chairperson understood Mr C's charge of harassment to have originated from the threat of court action from their solicitors. Officer 1 had explained to Mr C in person that Mr C would not receive permission to gain access and Officer 1 followed this up by letter. Mr C decided to ignore his letter and went ahead anyway. The matter was then referred to the Association's solicitors. The Management Committee regretted that Mr C felt that he had been harassed by staff but did not believe that that was either their intention or resulted from their actions.

16. The Chairperson stated that the Management Committee were aware that the lack of provision of off road parking had been a thorny issue for some time and were also aware of the desire by some people to create off road parking in their gardens by crossing over Association land. The Chairperson assured Mr C that during 2006/7 the Association would carry out a policy review and would take into account Mr C's views in any conclusions they reached. The Chairperson supplied Mr C with contact details of this office.

17. In a letter of 25 February 2006 to this office, Mr C stated that his neighbour had been parking on the granite setts since Mr C had moved to the area without a letter from the Association's solicitors. He considered such parking an even greater safety issue. In a further letter of 15 March 2006, Mr C pointed out that because the Association had fenced the hard landscaped area there was effectively no footpath outside his drive. There was no pedestrian access and people were forced to walk on the road.

18. I made enquiry of the Association on 19 April 2006 and the Director responded on 11 May 2006, reiterating the Association's position. In addition, he stated that Section 66 of the Housing (Scotland) Act 2001 required the Association to obtain written consent from Scottish Ministers prior to disposing of land or property in its ownership. While Communities Scotland were reasonable in dealing with such requests, the Association's own Sale of Incidental Land Policy endorsed in practice by the Management Committee was that land or other assets would not be disposed save in exceptional circumstances as determined by the Director. In this instance, neither Officer 1 nor the Director considered the desire to create a

driveway to be an exceptional circumstance. The Director confirmed that, as part of his 2006/7 departmental activity plan, Officer 1 had been tasked to carry out a wholesale review of the consequences of a relaxation of their policy. The Director understood that Mr C did not want to purchase the area of granite setts but rather wanted a wayleave over it in order to park his car in his rear garden area. With reference to the Association instructing solicitors, the Director provided examples of letters from Officer 1 in 2004 and 2005 refusing a similar request to that made by Mr C and in respect of the creation of an unauthorised driveway across Association property. In both instances the situation was remedied without the intervention of the Association's solicitor.

19. Mr C was given the opportunity to comment on the Director's letter. He commented that he had not had sight of the Association's Sale of Incidental Land Policy. He hoped that any review of policy would be put out for consultation with both residents and owners. He considered it presumptuous for the Director to say that Mr C was not interested in purchasing, when Officer 1 had told Mr C that the Association had no intention of selling off their assets. He noted that warning letters had been sent to two other residents but not to him. He reiterated that escalating the matter to the Association's solicitors was harassment. Finally he commented on the years that had elapsed since the houses had been built by the SSHA. He considered it likely that current planning regulations would require more adequate parking provision.

Conclusions

Complaint at Paragraph 2(a)

20. Mr C purchased a property from another owner in November 2003 which not only had no vehicular access to the rear garden but also had a bollard providing a physical impediment to such access. While I fully understand Mr C's reasons for wishing to create a rear parking area and to park his car off road, the Association have made clear their policy and practice is to grant such requests only in exceptional circumstances. That is a discretionary policy and not a policy of blanket refusal. I do not uphold Mr C's first complaint.

Complaint at Paragraph 2(b)

21. It appears to me that Mr C made a request for permission to cross the landscaped area rather than a definite application to purchase the area between

his garden and the carriageway off the road. A proposed purchase would have been resisted in that the circumstances would not be regarded as exceptional in terms of the Association's Sale of Incidental Land Policy. I do not consider that the Association's position was unreasonable. I do not uphold this complaint.

Complaint at Paragraph 2(c)

22. Mr C contends that the informal practices of others throw doubt on the consistency of decision-making by the Association in the area. However the Association's solicitors' response to Mr C's solicitors in respect of the five instances cited by Mr C and their letters of 2004 and 2005 to two other residents illustrate that the Association acted consistently in light of unauthorised activities. In sum, the Association's solicitors were entitled to inform Mr C through his solicitors of the possibility of legal action and did not in my view turn a blind eye to apparent unauthorised activity by others. I do not uphold this complaint.

Recommendation

23. While Mr C's complaint has not been upheld, the Ombudsman is pleased to learn that the Association's policy is to be reviewed in the current year. Her office will follow up the matter with the Association in early 2007.

26 September 2006

Explanation of abbreviations used

Mr C	The complainant
The Association	Bridgewater Housing Association
The Director	The Director of the Association
Officer 1	The Association's Technical Services Manager
SSHA	Scottish Special Housing Association