

Scottish Parliament Region: South of Scotland

Case 200400434: North Ayrshire Council

Summary of Investigation

Category

Local government: Land and property, Policy and administration

Overview

On 2 June 2004, the Ombudsman received a complaint from a man (referred to in this report as Mr C) about North Ayrshire Council's (the Council) failure to ensure maintenance of open space. This led to the land adjacent to Mr C's property becoming overgrown and unkempt.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) that the Council provided inconsistent information on the imposition of planning conditions regarding the maintenance of common areas (*not upheld*);
- (b) about the Council's uncertainty over the Deeds of Condition and the responsibility for the maintenance of common areas (*not upheld*); and
- (c) that he experienced delays during the Council's handling of the complaint (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendation to make.

Main Investigation Report

Introduction

1. When Mr C first approached the Ombudsman, he had not yet been through the complaints procedure at the Council. He was advised to do this before the Ombudsman would be able to look into the matter. The complaint took some time to progress through the procedure and the Ombudsman intervened on several occasions to follow up the complaint. Mr C exhausted the complaints procedure on 23 November 2005, when he received a reply from the Chief Executive.

2. The complaints from Mr C which I have investigated are:

- (a) that the Council provided inconsistent information on the imposition of planning conditions regarding the maintenance of common areas;
- (b) about the Council's uncertainty over the Deeds of Condition and the responsibility for the maintenance of common areas; and
- (c) that he experienced delays during the Council's handling of the complaint.

Investigation

3. The investigation was based on information provided by Mr C and by the Council, and on the correspondence between Mr C and the Council regarding the complaint. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Both Mr C and the Council have been given the opportunity to comment on a draft of this report.

(a) The Council provided inconsistent information on the imposition of planning conditions regarding the maintenance of common areas

4. The former Cunninghame District Council (CDC) granted outline planning permission in June 1990 to a developer (Developer 1) for a housing development. One of the conditions required a landscape structure plan for the whole site to be produced before any development of the site could take place. Developer 1 duly produced that document. CDC subsequently gave full planning permission.

5. The notes to the drawings in the landscape structure plan stated 'structure planting and open space to be maintained by CDC'. The detail of the landscape structure plan did not constitute conditions of the planning consent thus it was never a condition of the planning consent that CDC was to maintain the open

space. I have seen a copy of the landscape structure plan and this has been neither signed nor stamped by the Council.

6. The Chief Development Control Officer conveyed these findings by a letter to Mr C dated 9 June 2004 and the Council has never deviated from this position.

(a) Conclusion

7. Based on the above information, I do not uphold this complaint. It is, however, understandable that Mr C came to the conclusion, based on the landscape structure plan, that responsibility for the maintenance of this area lay with the Council. The Ombudsman suggests that the Council considers taking steps to prevent such ambiguities occurring in the future.

(b) There was uncertainty over the Deeds of Condition and the responsibility for the maintenance of common areas

8. Mr C was advised in a meeting in August 2004 that the obligation for maintenance may be a legal burden contained within the housing deeds. Mr C was advised that CDC was not party to any legal agreement regarding these areas of ground and did not hold copies of the title deeds. He was told that the developer would be likely to have drawn up Deeds of Condition which would set out the respective obligations on the developer and house owners.

9. Although Developer 1 obtained planning permission for the development, they subsequently sold off areas of land to other developers. The Council undertook to contact these developers and obtain information on the Deeds of Condition. They discovered that the responsibility for maintenance of the areas fell on all the house owners in the development and that it would be necessary for them to appoint a factor. This was communicated to Mr C.

(b) Conclusion

10. The Council carried out searches on the land in question and corresponded with builders in order to assist Mr C. They did so at their own expense. Once the Deeds of Condition had been obtained, Mr C was provided with clear information with regard to them. I, therefore, do not uphold this complaint.

(c) Mr C experienced delays during the Council's handling of his complaint

11. Mr C first complained to the Council via his Councillor at the end of May 2004 and received a reply on 9 June 2004. Mr C was not satisfied with this answer and so wrote to the Council again on the 10 June 2004 to pursue the matter. The Council's complaints procedure states that a reply will be sent within 28 calendar days. Mr C received a letter from the Council on 8 July 2004 informing him that his complaint was being investigated. At this stage, the Council was corresponding with various parties involved in order to clarify the situation. There were several exchanges of correspondence between Mr C and the Council during this time. A meeting was held with Mr C and other residents on 4 August 2004.

12. Mr C wrote a further letter on 6 September 2004. He received no reply and so wrote again to chase it up on 28 January 2005. Mr C received a letter on 11 February 2005 in which the Council stated that they would establish what action had been taken since the meeting in August and get in touch with Mr C within two weeks. Mr C did not receive the promised answer and wrote again to the Council on 15 March 2005. He contacted this office on 12 April 2005 as he had still not received an answer from the Council. The Council eventually provided Mr C with a response on 17 April 2005. It took the Council 32 weeks to give Mr C a reply to his letter of 6 September 2004; this constitutes a delay of 28 weeks above the 28 days within which the Council's complaints policy states a complaint will be answered.

13. In his letter, the Chief Executive apologised for the delay in responding to Mr C and stated that he has asked Officer 1 (the Officer involved) to tighten his customer care procedures to ensure that there will be no repeat of this type of situation.

14. Mr C wrote back to the Chief Executive on 20 April 2005 with certain enquiries and additionally wrote to this office. He received a reply from the Chief Executive on 3 May 2005 and wrote again on 7 May 2005. He received a reply to this letter on 19 May 2005. Mr C wrote to the Council again on 21 May and on the 27 June. The Council sent a reply to Mr C on 5 July 2005 and referred him to this office.

(c) Conclusion

15. The Council did not adhere to the timescales specified in their complaints procedure. The Chief Executive has apologised to Mr C for the long delay at the second stage of the procedure and has asked Officer 1 to tighten his customer care procedures to ensure that there will be no repeat of this type of situation. I commend the Chief Executive for this and am satisfied that adequate remedial action was taken before an official complaint was made to the Ombudsman. I, therefore, do not uphold this complaint.

31 October 2006

Explanation of abbreviations used

Mr C	The complainant
CDC	Cunninghame District Council
The Council	North Ayrshire Council
Developer 1	A developer who was granted outline planning permission in June 1990
Officer 1	An Officer of the Council responsible for handling Mr C's complaint