

Scottish Parliament Region: South of Scotland

Case 200502245: Loreburn Housing Association Ltd

Summary of Investigation

Category

Housing: Maintenance

Overview

The complainants (Mr and Mrs C) complained that, despite their paying a regular service charge, Loreburn Housing Association (the Housing Association) has failed to maintain properly the communal garden ground around their house.

Specific complaint and conclusion

The complaint which has been investigated is the failure of the Housing Association to maintain properly the communal garden ground (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 15 November 2005 the Ombudsman received a complaint against the Housing Association from Mr and Mrs C. They complained that despite paying a regular service charge, the Housing Association has failed to maintain properly the communal garden ground around their house. They want the instigation of regular maintenance visits and the offending shrubs removed.

2. The complaint from Mr and Mrs C which I have investigated concerned the failure on the part of the Housing Association to maintain properly the communal garden ground.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between the Housing Association and Mr and Mrs C, together with details of an appeal hearing dated 14 October 2005. I have also had sight of copies of ground maintenance contracts and records, a shared ownership occupancy agreement, a disposition between the Housing Association and Mr and Mrs C, Deeds of Conditions and copies of photographs provided by Mr and Mrs C. On 28 November 2005 I made a written enquiry of the Housing Association and their detailed response was sent to me on 15 December 2005.

4. My findings of fact and conclusions for the complaint are set below and while I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the Housing Association have been given an opportunity to comment on a draft of this report.

Complaint: Failure on the part of the Housing Association to maintain properly the communal garden ground.

5. Mr and Mrs C are sharing owners of their property and as such they enjoy the full rights of outright ownership, including responsibility for internal and external maintenance. The Housing Association provides a factoring service on behalf of owners like Mr and Mrs C, who pay an annual garden maintenance fee of £33.70.

6. In August 2002, before she was married, Mrs C wrote to the Housing Association expressing disappointment with the condition of the common areas despite the fact that she paid a service charge for them to be maintained. Nothing further appears to have occurred until 19 April 2005 when Mrs C wrote to the Housing Association's Chief Executive disagreeing with the Maintenance Manager's view that the gardens were in a satisfactory condition. She said that this matter had taken too long to resolve and that she wanted to appeal and would like the bushes removed. As the Chief Executive had received other similar complaints, on 22 April 2005 he issued a short questionnaire to those affected, including Mr and Mrs C, giving various options to deal with the matter.

7. On 28 July 2005 the Chief Executive reported the outcome of his survey to Mr and Mrs C. He agreed that there appeared to be a general complaint that the landscaping for the area was now unsuitable but pointed out that any changes to the landscaping would incur significant charges which would have to be passed onto the residents of the development. On the specific questions he asked, he said that five households were unhappy with the maintenance of the common areas, one was happy and that the remaining eight failed to respond. He took from this that the majority of the residents did not feel strongly about the matter and did not wish to pay increased charges and he pointed out that, as a charity, the Housing Association was not in a position to cover the costs nor could other tenants or sharing owners be expected to subsidise the works.

8. He also replied to Mr and Mrs C about their complaint that the grounds maintenance contractor was failing to provide an adequate service and while he agreed that there were some occasions of this, he said that in general the service was acceptable and comparable to that provided in other areas. He said that the works had been competitively tendered and were in line with the contract price. However, he advised that a new contract has just been tendered and that it had been written in such a way as to be more explicit about the standards required and to require 'signing off' by a resident of each development. He warned that grounds maintenance prices had risen and that it would be important to strike a balance between cost and service. He expected the new contract to start at the beginning of September 2005.

9. Mr and Mrs C remained unhappy and wrote again to the Chief Executive on

31 August 2005. It was their view that the Housing Association should assume responsibility for the costs of removing the bushes, that the grounds maintenance contractor had not performed well and that the service they received was not comparable to other areas. They said that they received little in return for the service charge they paid.

10. On receipt of this the Housing Association began the process of arranging an appeals hearing which was held on 14 October 2005. However, the Appeals Sub Committee concerned decided amongst other things that, in line with the sharing owner agreements, it was the responsibility of the sharing owners to cover the costs of any works to maintain or upgrade the grounds but that this could only proceed if all owners agreed. Mr and Mrs C were advised that in the event that they did not agree with this outcome of their appeal they could then refer the matter to the Ombudsman.

11. In his reply to me of 15 December 2005 the Chief Executive reiterated his view that it appeared to him that sharing owners were unwilling to pay for the works themselves (that is, to increase the gardening service or have the landscaping radically altered), and there was little he could do. He was satisfied that the bushes were regularly cut back to avoid them blocking paths or light. He said that he had visited the site himself and was satisfied that the landscaping was being maintained in accordance with the Housing Association's standards, however, he accepted that the landscaping may not be to everyone's taste.

12. The Chief Executive also looked into the possibility of dividing up the communal ground and giving it to each individual owner but on exploring the possibility further with the Housing Association's lawyers, he established that it would be an expensive and complicated action to change the titles for each owner within the development.

Conclusion

13. Mr and Mrs C take pride in their home and in the area they live. They also pay an annual service charge which includes £33.70 per year for garden maintenance but they believe that the Housing Association's contractors do not do sufficient work in return. They think they already pay enough and, as they are dissatisfied, want the Housing Association to have the shrubs removed or

maintained. After reviewing all the information, I do not agree and take the view that the necessary works are carried out to a reasonable standard, particularly since September 2005 when a new contract came into place requiring house occupiers to sign off the work. The work Mr and Mrs C want would incur extra expense which the Housing Association say they cannot justify and I see no grounds for criticising this decision. Additionally the Housing Association explored the possibility of alternative solutions with their lawyers and the owners but, in the light of responses received, made the reasonable decision not to pursue these. In the circumstances I do not uphold the complaint.

31 October 2006

List of abbreviations used

Mr and Mrs C

The complainants

The Housing Association

Loreburn Housing Association