

Scottish Parliament Region: Central Scotland

Case 200401887: North Lanarkshire Council

Summary of Investigation

Category

Local government: Sale of Land; Complaints Handling

Overview

The complainant (Mr C) complained that North Lanarkshire Council (the Council) acted unreasonably in that they agreed to sell him a piece of land and then subsequently withdrew it from sale. Mr C also complained about the way the Council dealt with his complaint.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council agreed to sell a piece of land to Mr C but subsequently refused to do so (*not upheld*); and
- (b) the Council acted unreasonably when Mr C complained (*not upheld*).

Redress and Recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. Mr C owns a piece of land on which his house and his business premises are situated. The Council owns the surrounding land. Mr C would like to expand his business and indicated to the Council that he would be interested in buying some land from them in order to do so. The Council agreed that an area of land adjacent to Mr C's land was surplus to requirements. Negotiations started but before they were concluded the Council withdrew the land from sale. Mr C considered that the Council had acted unreasonably in withdrawing the land from sale and said that he spent time and incurred expense needlessly.

2. Mr C complained to the Council and exhausted their complaints procedure but remained dissatisfied with their response.

3. Mr C complained to the Ombudsman about the Council's actions and how they had dealt with his complaint.

4. In investigating this complaint I have corresponded with the Council and have read documents provided by both Mr C and the Council. Information from the Council included their process for identifying and disposing of land deemed 'surplus to requirements' and their policy on how disposals of such land should proceed (including sales at market price, and sales to neighbouring proprietors).

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report. The Council did not comment. Mr C said that he disagreed with the report findings but did not produce any new evidence which would lead me to change my conclusions.

6. In expressing his concerns to the Ombudsman, Mr C also made particular reference to his belief that the Council improperly made a large profit from selling land (obtained at a low price under a CPO) for residential housing. Mr C, therefore, wanted me to investigate the history of land ownership in the area. I have seen no evidence, however, to substantiate this allegation and Mr C appears to have provided no specific evidence to the Council about this. I was, therefore,

unable to investigate this aspect of Mr C's complaint and I informed him that this was outwith the Ombudsman's jurisdiction.

7. Mr C also complained about the conduct of recent Council Committee meetings at which the redevelopment of the whole area was considered. He was unhappy that his objections had been omitted from the Minutes. However, the Ombudsman does not normally investigate complaints which have not been made to the Council in the first instance, and this matter had not been raised with them when I investigated the original complaint.

Investigation

(a) The Council agreed to sell a piece of land to Mr C but subsequently refused to do so

8. Mr C has an auto-electrical and motorcycle business which he runs from a workshop at the rear of his house. Mr C wished to expand his business by demolishing the workshop and building a factory unit. He approached the Council with a view to buying some land from them in order to accommodate the larger building.

9. On 13 February 2004 the Section Manager (Development and Disposals) wrote to Mr C. She said that on 24 January 2004 the Community Services Committee had declared an area of ground adjacent to Mr C's property surplus to requirements. The Policy and Resources (Property) Subcommittee had subsequently decided that the land could be disposed of. The Section Manager asked Mr C to confirm that he was still interested in purchasing the land in which case she would issue heads of terms (the conditions upon which the Council would agree to sell the land) and prepare a report for the next available Committee meeting. She also enclosed a plan of the area of ground amounting to 820 square metres which the Council proposed to sell.

10. Mr C confirmed that he was still interested and the Section Manager issued the heads of terms on 23 February 2004. On 24 February 2004 the Council's Surveyor valued the land at £40,000.

11. Mr C responded by calling into the Council's offices. He said that he would like to proceed but he would also like to purchase additional land. The Section Manager wrote to Mr C on 3 March 2004 confirming that she would look into his request. She asked him to confirm that he accepted the heads of terms for the piece of land already identified as surplus to requirements. She said that she had prepared a report about this for submission to the next meeting of the Council's Policy and Resources (Property) Subcommittee due to take place on 18 March 2004.

12. On 8 March 2004 Mr C said that he did not wish to proceed at the price proposed by the Council. He made a verbal offer of £1 for the land. The Section Manager wrote to Mr C the following day. She said that £1 was not a reasonable figure for the purchase of potential development land. She said that she would, however, be prepared to consider Mr C's written evidence in support of his argument that the price asked by the Council was excessive. She said that she could not consider anecdotal evidence (verbal information not proved to be fact based) and that as negotiations were not concluded she would postpone her Subcommittee report until a later meeting on 27 May 2004.

13. Mr C also called unannounced at the Council's offices twice during March. On the first occasion he met the Council's Surveyor and another official. On the second occasion he met the Group Manager and another official from Property Services. The note of the second meeting shows that he asked them to discuss the valuation but they would not do so as Mr C had not produced evidence in support of a reduced price. Mr C suggested that the Council were deliberately asking an unreasonably high price so that he would not buy the land. The Council officials said they were only seeking the market value, which they were obliged to do. It is documented that Mr C then insinuated that the Group Manager drove an expensive car and that this related to his involvement in land sales. The Group Manager said that was unacceptable and stopped the meeting. Mr C was shown from the premises.

14. The Section Manager wrote to Mr C on 30 March 2004. She offered a meeting in early April with the Council's Surveyor specifically to consider Mr C's written evidence in support of a reduced price, explaining how this should be presented. This meeting took place on 7 April 2004, but Mr C did not produce

written evidence. According to the minute of the meeting he gave some anecdotal evidence and made accusations of theft and impropriety against the Council, the Council's Surveyor and the Group Manager. He said that he wished the Council to declare additional land as surplus to requirements, as the land the Council was offering to sell was not enough for his needs. As a result of the meeting the Group Manager wrote to Mr C on 14 April 2004 explaining the Council's policy for disposing of land and property. He also explained how Mr C could progress his purchase of the original land and that if he wished to pursue his stated interest in purchasing further land he should formally request this. I have seen no evidence that Mr C did so at that time.

15. Mr C telephoned the Council's Surveyor on 20 April 2004. He said that he was going to try to save the Council time and money by approaching the Chief Executive directly rather than discuss the matter further with any other personnel. The Council's Surveyor told Mr C that he could not progress matters until Mr C produced the evidence he had been asked for.

16. On 29 April 2004 the Land Records Manager told the Group Manager that the Council would not be declaring any additional land surplus to requirements and Mr C was notified of this.

17. At this point another significant matter began to affect the process. Since the demolition of a local heavy industrial plant in 1996 the Council had been involved in a partnership with the aim of redeveloping the whole area. The plans about what would be done changed and developed over time. In July 2004 the Council's Department of Planning and Environment verbally raised the possibility that, because of proposals to develop the area, there might be an operational requirement for the Council to retain the original piece of land in which Mr C was interested. In response to my enquiries the Council said that, although consultations within the Council about this possibility had begun, progress was delayed because the officer dealing with this matter was diagnosed with a terminal illness. Another officer was assigned to the work, but the delay meant that a final decision was not made until December 2004.

18. As part of this investigation I have obtained details of the process that is followed in the identification and disposal of land surplus to requirements. Briefly,

information about potentially surplus land belonging to one Council Department is circulated to all Departments. Another Department may then request that the asset is reallocated. Even if no such interest is expressed at that time, during the process of disposal a Department may ask that land earlier notified to them as potentially surplus to requirements is withdrawn from sale, if it is found to have an operational use. Such intervention can take place until the point that missives are concluded with the potential purchaser.

19. Meanwhile Mr C was still interested in purchasing the original piece of land. He appointed a firm of Chartered Surveyors (Mr C's Surveyors) to act for him. On 26 August 2004 they wrote to the Council asking for a meeting to negotiate a price for that land.

20. On 8 September 2004 Mr C's Surveyors met the Council Surveyor, but no agreement was reached about the value of the land.

21. On 18 October 2004 Mr C's Surveyors wrote to the Council formally asking if additional land could be declared surplus to the Council's requirements. The Section Manager said she had passed this request to the Operational Property Section and they would consider it. She noted, however, that there remained an impasse over the value of the original land. The Section Manager said that she considered the Council justified in asking for the full market price for the land and suggested that Mr C might wish to consider other sites.

22. Mr C telephoned the Council's Surveyor on 26 November 2004. He asked that the extra land to which his own Surveyors had referred be released for him to purchase but was told that the Operational Property Section had not yet concluded the surplus process.

23. On 6 December 2004 the Operational Property Section confirmed in an internal note that no additional land would be declared surplus to requirements. The Section Manager wrote and told Mr C's Surveyors this on 10 December 2004. She asked if Mr C now wished to accept the heads of terms issued on 23 February 2004 in relation to the original 820 square metres of land.

24. Mr C's Surveyors had already contacted the Planning Department about potential uses of the land and possible related planning permission requirements. On 16 December 2004 Mr C's Surveyors wrote to the Council to say that Mr C would like to proceed with the purchase. They referred to possible planning restrictions, and to their own earlier view that the land was worth £12,000 for industrial use. They said they considered the Council's price of £40,000 to be totally unrealistic.

25. At this point, however, the significant matter referred to in paragraph 17 re-emerged. On 17 December 2004 the Planning Department confirmed to the Council's Surveyor that the land should not be sold until the full implications of the plans to redevelop the whole area were understood.

26. On 23 December 2004 the Section Manager wrote to Mr C's Surveyors to say that the original piece of land was no longer surplus to operational requirements and, therefore, no longer for sale.

27. Mr C complained to the Council, then the Ombudsman, that the Council had firstly asked an unrealistic price for the land to prevent him purchasing it, and had then unreasonably withdrawn it from sale. He said that he wanted 'proper and honest' negotiations between the Council and his Surveyors.

28. In response to my enquiries the Council said that the Council's Surveyor who valued the land was a fully qualified Chartered Surveyor. He provides property advice to the Council along with appropriate valuations of the Council's property interests. The Council's Surveyor had consulted with the Department of Planning and Environment in terms of acceptable uses for the site. The Council said that Mr C had previously told a Planning Officer that it might be his intention to buy the Council's land, clear the whole site and sell it on for residential development. Mr C denies saying this but his Surveyors raised the issue of residential development in correspondence with the Council. The Council's Surveyor was aware that due to recent reform of the feudal system it would be difficult, if not impossible, to restrict Mr C's use of the site to industrial use (which was ostensibly the purpose for which he wished to buy it). The Council's Surveyor, therefore, recommended that the full market value for residential land should be sought. He had explained the basis for his recommendation to Mr C's Surveyors.

29. The Council also said in response to my enquiries that during an un-minuted conversation the Council's Surveyor offered Mr C a compromise. He had offered to sell the land to Mr C at the value of industrial land if Mr C entered into an agreement that, if there was a change of use, additional money would fall to be paid to the Council. To safeguard the Council's position, a standard security would be placed over the site. Mr C, however, did not accept this. Although there is no minute evidencing this, Mr C has seen the Council's response. He has since asked them for written information about this conversation but I note that, in contrast to other comments he made on their response, he does not specifically dispute that a compromise was offered.

30. In his complaint to the Ombudsman Mr C said that in 1984 the Council had compulsorily purchased a small piece of Mr C's land to widen the road. Mr C said he believed that the Council had also compulsorily purchased the land surrounding his house. He believed that the Council had only paid £1 for the land under a compulsory purchase order. In the event Mr C's land was not in fact required. The Council had returned it to him for £1 and paid his legal fees. The Council had retained the rest of the surrounding land.

31. In response to my enquiries the Council produced a site plan and information that shows that the land surrounding Mr C's property was, in fact, sold in 1954 to the County Council of the County of Lanark for £1. This was not a compulsory purchase but a sale of land to that Council by a private individual. In the 1970s, following local government reorganisation, ownership of the land passed to Motherwell District Council. In 1984, Strathclyde Regional Council promoted a compulsory purchase order (CPO) over part of the land. It was as part of that CPO that Strathclyde Regional Council made the compulsory purchase of the small area of Mr C's land which was later returned to him. The surrounding land now belongs to the Council as successor to both Motherwell District Council and Strathclyde Regional Council.

(a) Conclusion

32. Mr C complained that the Council acted unreasonably in respect of this matter but having carefully read the relevant documents I do not consider that this is the case. Mr C expressed an interest in purchasing land from the Council. The

Council declared the land surplus to requirements and entered into negotiations with Mr C and then with his Surveyors. Mr C was unhappy with the Council's valuation of the land. The Council, however, acted appropriately by using a relevant professional to value the land (who explained the basis of his valuation to Mr C's Surveyors) and the evidence shows that throughout the process they appropriately followed procedure. The Council said that a compromise was offered to facilitate the sale, but that Mr C decided to reject it. Regardless of that, however, the decision to buy or not to buy has always rested with Mr C and was his choice.

33. There was certainly a delay in the Council's decision to ultimately withdraw the original piece of land from sale and I accept that if that decision had been made earlier it might have saved Mr C money in that he need not have instructed his Surveyors for so long. On the other hand, the delay gave Mr C and his Surveyors further opportunity to try to reach agreement with the Council regarding the price and the use to which the land would be put. I note that no agreement was concluded but I am also satisfied that the Council's actions were not intended to frustrate Mr C. Furthermore I do not consider that the delay resulted in any injustice to Mr C. It was up to him to decide if he wished to purchase the land during this period. While negotiations were ongoing the partnership's plan to redevelop the whole area was emerging and this development eventually changed the Council's attitude to disposing of the land. I understand Mr C's disappointment, but I am satisfied that the Council were entitled to react to this change of circumstance by withdrawing the land from sale and that they did not behave unreasonably in doing so.

34. Mr C firmly believes that the Council acted inappropriately. He has made many anecdotal references to this to the Council and to me, in letters, meetings and conversations. I have, however, found no evidence of this during my investigation and I am satisfied that the Council acted appropriately. On more than one occasion they explained the process, or elements of it, to Mr C. They kept him well informed throughout and gave him a number of opportunities to provide relevant evidence or to conclude the sale. I do note that, in July 2004, the possibility that the original plot of land might not in fact be surplus to requirements was raised internally within the Council. The final decision to withdraw the land from sale was not taken until December 2004, when Mr C's Surveyors were

notified. There is no evidence in the papers that I have seen that Mr C was alerted to this possibility during these six months, and doing so might well have been of assistance to him in considering his position. However, as I have already pointed out (paragraph 33) the delay in proceeding with the decision on whether or not the land was surplus enabled Mr C's Surveyors to continue negotiations on the sale for longer. From Mr C's point of view it is unfortunate that he was told of the decision (that the land was no longer surplus to requirements) so closely after his Surveyors' notification to the Council that he wished to proceed with the purchase. However, I also note that his Surveyors' notification letter to the Council quite clearly shows that Mr C still significantly disputed the value of the land, so matters were not actually as near conclusion as they might initially appear from that response. I also note that the Council said that they would retain Mr C's interest on file should the situation change. I do not uphold this complaint.

(b) The Council acted unreasonably when Mr C complained

35. Mr C said that when he complained the Council behaved unreasonably towards him.

36. When the Council decided to withdraw the land from sale Mr C contacted his local MP who wrote to the Council on his behalf. The Head of Property Services replied on 20 January 2005 explaining the position.

37. On 31 January 2005 Mr C called at the Council's offices. He did not have an appointment. He met the Head of Property Services. As a result of this meeting the Director of Housing and Property Services wrote to Mr C on 1 February 2005. He said that in the light of the approach Mr C had adopted the Director did not consider that further face-to-face meetings between Mr C and members of the Council's staff would be appropriate. He asked Mr C to desist from further personal contact but said that he would be pleased to respond to Mr C's written enquiries. He restated the Council's position that they did not wish to sell the land but would contact Mr C if the situation changed.

38. On 2 March 2005 Mr C wrote to the Council enclosing a complaint form. The Head of Property Services responded on 30 March 2005 setting out the Council's position on various matters raised by Mr C.

39. Mr C then approached the Depute Leader of the Council and the Chief Executive wrote to Mr C on 13 April 2005 indicating that the matter was being dealt with through the complaints process. He asked Mr C to forward any further information he wished to be considered to the Director of Housing and Property Services.

40. Mr C wrote to the Council again on 8 and 14 April 2005 and the Head of Property Services replied on 27 April 2005. He asked Mr C to stop telephoning his staff and promised to deal with Mr C's correspondence.

41. The Director of Housing and Property Services wrote to Mr C on 16 May 2005 concluding the Council's complaints procedure. Mr C was advised that if he remained dissatisfied he could contact the Ombudsman.

42. On 9 June 2005 Mr C visited the Council offices. He did not have an appointment. He wanted to see the Director of Housing and Property Services. The Director was unavailable but he wrote to Mr C on 10 June 2005. He said that he did not think that a meeting could serve any useful purpose.

43. Mr C continued to write to the Council and on 30 June 2005 the Chief Executive wrote to Mr C again advising him to contact the Ombudsman.

44. Mr C continued to correspond with the Council and obtained documents from them through a Freedom of Information request. The Chief Executive wrote to Mr C on 1 August 2005. He repeated that the Council did not wish to sell the land.

45. On 15 August 2005 Mr C visited the Council offices. He was asked to leave and when he refused to do so the police were summoned and he was escorted from the premises.

46. Mr C continued to write to the Council and to call at their offices. On 22 August 2005 the Director of Housing and Property Services wrote to Mr C. He said that he did not think that there was anything further the Council could do to assist Mr C. He was concerned about Mr C's behaviour in relation to Council staff and referred to the fact that police had required to be summoned twice to remove Mr C because he had refused to leave when asked to do so. He was particularly

concerned that Mr C had asked for an officer's home address. He formally advised Mr C that he was no longer permitted to enter the Council's offices or car parks. He said that if he did the Council would take legal action. Mr C should not telephone but should make all enquiries in writing. The Council would only deal with correspondence which was relevant and dealt with matters not previously addressed.

47. Mr C's Surveyors wrote to the Council on 18 November 2005 but the Group Manager (Valuation Service) replied on 8 December 2005 that the Council's position remained the same and they were not minded to resume negotiations.

48. Mr C wrote to the Council again in December 2005 and January 2006. He received replies restating the Council's position.

49. Mr C visited the Council offices on 29 March 2006. When he refused to leave the Council again called the police and Mr C was removed from the premises.

50. Mr C complained to the Ombudsman that the Council would not meet with him, accept his telephone calls or reply to his letters. Mr C said that the Council behaved unreasonably in calling the police.

51. I have seen considerable correspondence between the Council and Mr C on this issue, supplied by both parties. From this I have gathered evidence of Mr C's visits to the Council offices, including notes of meetings. I have also spoken to Mr C about this. Mr C has disputed the behaviour attributed to him. He has said that he was not aggressive, and that although he was only waiting in the Council's offices, the Council then wrote and formally excluded him. He thinks that the Council have treated him unfairly when he was, in his view, simply trying to get information or a response. He is particularly unhappy that the police were involved. The Council, on the other hand, have said that they have observed the effect of the approach and attitude that Mr C has adopted with their staff over a period of time, and the consequent effects on the running of their offices. They were concerned for the safety of staff and took the decision to exclude him after several visits from Mr C that caused them concern. Police were called when Mr C refused to leave.

(b) Conclusion

52. The correspondence shows that since the Council made the decision to withdraw the land from sale Mr C has repeatedly tried to re-open negotiations. The Council have made their position on this clear – they no longer wish to sell the land. Because of this they have told Mr C that they will not answer repetitive letters or take repetitive telephone calls from him. The Council have said that if the position changes they will contact Mr C or his Surveyors with a view to selling the land to him. They have also said that they would deal with any new matters Mr C raises in correspondence. I am satisfied that, having taken his concerns through their complaints process and having made the position clear to Mr C, the Council is entitled to refuse to respond further with him and that it was reasonable for them to do so. Mr C has made many allegations about the Council but has not supported these with relevant evidence. Despite this, it is clear that the Council have gone to significant lengths to provide replies to his questions and answer his concerns. In terms of their refusal to continue to correspond on the issue of the land purchase, it would not be a reasonable use of public resources to repeatedly answer points that have already received a reply. The Council have the right to draw the correspondence to an end when they feel they have replied fully to the matter and from the evidence it is clear that they have replied in detail. The fact that Mr C does not accept their explanations or their position does not mean that the Council must continue to correspond with him on this matter.

53. Mr C also said that he was unhappy that he has been excluded from the Council's offices. I cannot comment directly on the substance of what is reported to have occurred during his visits and calls there. However, I can comment on the approach the Council have since adopted. The Council have a legal responsibility to protect the safety and wellbeing of their staff while they are at work. They clearly had concerns about Mr C's behaviour towards staff, as shown in the notes of the calls, meetings and visits that caused them concern. They decided to exclude Mr C after several such encounters and clearly explained their reasons for this to him. They made the decision in the light of their concerns, which they were entitled to do. They are not obliged to allow Mr C to be on their premises. Although Mr C disagrees with the decision it is for the Council to judge whether or not they are willing to accept him onto their premises. In the circumstances and in the light of the evidence I have seen, I consider that the Council's decision was reasonable.

54. I do not uphold this complaint.

28 November 2006

Explanation of abbreviations/descriptions used

Mr C	The complainant
The Council	North Lanarkshire Council
Mr C's Surveyors	Firm of Chartered Surveyors engaged by Mr C in August 2004 to act for him in the matter of the potential purchase of land
The Section Manager	Manager (Development & Disposals) within the Council's Department of Housing and Property Services (Property Division)
The Council's Surveyor	Property Surveyor from the Council's Department of Housing and Property Services (who advised them on the value of the land Mr C wished to buy)
The Group Manager	Manager (Surveying Services) within the Council's Department of Housing and Property Services (Property Division)
CPO	Compulsory purchase order