

**Case 200402081: Muirhouse Housing Association Ltd**

**Summary of Investigation**

***Category***

Housing Associations: Neighbour problems

***Overview***

This complaint concerns Muirhouse Housing Association's (the Association) response to the complainant (Ms C)'S request for action to be taken to prevent the use of a boundary wall by local children.

***Specific complaints and conclusions***

The complaints which have been investigated are that:

- (a) the Association failed to prevent people climbing over the boundary wall which adjoins Ms C's garden to access the adjacent site (*not upheld*); and
- (b) the Association failed to ensure Ms C's garden was secure (*not upheld*).

***Redress and Recommendation***

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 17 February 2005 the Ombudsman received a complaint from a woman (Ms C) against Muirhouse Housing Association (the Association). Ms C complained that the Association had failed to take effective action to resolve the problems of people climbing over the boundary wall which adjoins her property to access the neighbouring site.
2. The complaints from Ms C which I have investigated are that:
  - (a) the Association failed to prevent people climbing over the boundary wall which adjoins Ms C's garden to access the adjacent site; and
  - (b) the Association failed to ensure that Ms C's garden was secure.

### **Investigation**

3. My investigation involved examining all documents and correspondence provided by Ms C and written and telephone enquiries were made of the Association. I have also considered photographs of the site.
4. I have not included in this report every detail investigated, but I am satisfied that no matter of significance has been overlooked. Ms C and the Association were given an opportunity to comment on a draft of this report.

#### **(a) The Association failed to prevent people climbing over the boundary wall which adjoins Ms C's garden to access the adjacent site**

5. In response to my written enquiry the Director of the Association (Officer 1) explained that a 1.8 metre brick wall separated Ms C's property from the development situated on the other side of the boundary wall. Officer 1 said that, during the design process for the development in which Ms C's property was situated, the final plans for the adjoining development were not known. When the Association became aware of the final decision for the neighbouring site a decision was taken to upgrade the proposed fencing boundary to a boundary wall to try to ensure the privacy of the tenants.
6. Officer 1 explained that the Association had over the years listened to the concerns raised by tenants, including Ms C. They had met with tenants and staff

from the neighbouring development on a number of occasions and carried out a survey of the tenants to obtain their views on the boundary treatments and to ask for suggestions for action which might resolve the problems being experienced with the boundary wall. In consultation with tenants, a number of possible solutions had been attempted, including erecting fencing at the entrance to the development, and fitting sunbursts at various points. However, these did not prove to be successful. Another possible solution considered by the Association was to increase the height of the wall but this was discounted after discussions with the tenants as it was felt it would give the feeling of a fortress.

7. Officer 1 indicated that they had considered but had been unable to agree to Ms C's request that railings be fitted to the boundary wall. The structural engineer on the design team had advised against the fitting of railings or coping stones as these would be inappropriate. The railings could be used to assist people climbing onto the wall and could result in injury. The coping stones could weaken over time and again could lead to injury. This had been subsequently confirmed by various maintenance inspectors. The Association had requested that the adjoining development consider erecting railings on their side of the boundary wall but they had refused on the grounds of cost. They also felt that the railings would be used as climbing points.

8. I am aware that Ms C had previously requested a copy of the structural engineer's report. I have been advised that the advice given by the engineer was given verbally during meetings at the design stage of the development. While it is unfortunate that a written report does not exist, I am satisfied that the Association have considered Ms C's request and have explained why they are unwilling to fit railings. This was a decision for the Association to take. I am satisfied that relevant information was taken into account when reaching the decision and the decision was taken properly.

9. Officer 1 advised me that the issue of the boundary wall was again discussed at a recent drop-in session which had been organised to give tenants the opportunity to discuss general estate management issues, including the boundary wall. In advance of the session a letter was issued to all tenants inviting them to attend but it had also indicated that, if a tenant was unable to attend, staff would make an alternative arrangement to meet with them. Of the eight tenants who

attended, three were from properties that, like Ms C's, were adjacent to the boundary wall. I understand that Ms C did not attend or ask for an alternative arrangement.

10. Officer 1 indicated to me that, unfortunately, no new ideas or requests for action regarding the boundary wall were put forward at the session. Discussion had centred on previously raised suggestions, such as planting prickly plants or trying anti-climb paint on the more frequently accessed parts of the wall, although tenants accepted that the Association had attempted these in the past without success. The Association agreed to meet the cost of planting at agreed locations.

11. Officer 1 explained that discussions were ongoing regarding the longer term plans for the wall around the adjoining development which would greatly depend on the proposals for the adjacent development and which were outwith the control of the Association.

*(a) Conclusion*

12. I can understand Ms C's concern that children are continuing to climb the boundary wall, and appreciate that the matter has been ongoing for a number of years. However, I am satisfied that the Association have taken the issue seriously, and have considered Ms C's concerns. They have taken action in an attempt to resolve the problems with the boundary wall and are continuing to do so. It is unfortunate that, despite the efforts by the Association, it is very difficult to prevent people from climbing the boundary wall if they are determined to do so. I am satisfied that the Association are continuing to discuss the matter with the tenants and are willing to consider solutions put forward by the tenants. In these circumstances, I do not uphold this aspect of Ms C's complaint.

**(b) The Association failed to ensure Ms C's garden was secure**

13. Officer 1 indicated that each of the Association's developments were designed to ensure that the development met secure design standards. The Association were of the view that Ms C's home had a very secure front area, and that it was impossible to access Ms C's rear garden from the front of her property as there was a 1.8 metre high brick wall boundary. In addition, one side of Ms C's rear garden was bounded by a 1.8 metre wooden vertical fence designed to prevent people from climbing over it. The other two sides were bounded by a

standard 1.2 metre post and wire fence which separated each of the adjoining back garden areas. Of the 12 tenanted properties, Ms C was the only tenant to have raised concerns about the security of the area.

14. Officer 1 told me that the development had been designed to be open plan, with 12 family homes built within an open courtyard with a shared vehicle/pedestrian surface. The front gardens were separated by trip rails to ensure clear visibility within the courtyard at all times. All properties had their own driveways. In response to a request from Ms C, the Association had agreed to lay a second footpath over her front garden to stop people cutting across her front garden. The Association had also fitted 1.8 metre high railings at the entrance boundary to the development to try to prevent children from using the courtyard as an access.

15. Officer 1 indicated that, during the recent drop-in session the tenants who had attended the meeting fully supported the proposal to try to make the front gardens look more private which would hopefully discourage people from crossing them. The Association had agreed to replace the existing wooden trip rails with metal trip rails again to try to make the gardens look more private. The tenants were given the choice of styles. The next stage would be for the Association to obtain costings and to write to tenants with details of the trip rails. It had also been agreed that low fencing would be erected around the common garden areas.

16. Officer 1 explained that a shared garden backed onto Ms C's property. She accepted that, if Ms C felt that people were gaining access from this shared garden to her back garden or to the boundary wall, this could be a weak area. In an attempt to address this, the Association had agreed to Ms C's request to erect a new 1.8 metre side gate to the adjoining property which would ensure that the shared garden could only be accessed by the occupants of the four flats using this shared garden. She clarified that none of these tenants had raised a concern about access to their gardens.

17. I am aware that Ms C had also requested that the 1.8 metre wooden fence at her property be demolished and replaced with a side gate. Officer 1 explained that the Association had refused Ms C's request as they felt this would reduce privacy and make it easier to gain access to the rear garden. I am satisfied this was a

decision for the Association to take and I have seen no evidence that the decision was not taken properly.

*(b) Conclusion*

18. I understand Ms C's desire to ensure that she has privacy in her garden. However, I am satisfied that the Association have considered Ms C's concerns and have taken action which they consider to be appropriate in an attempt to deter people from entering her garden, within the obvious limitations of an open plan development. For this reason I do not uphold this part of Ms C's complaint.

28 November 2006

**Explanation of abbreviations used**

Ms C	The complainant
Officer 1	The Director of the Association
The Association	Muirhouse Housing Association