

Scottish Parliament Region: Mid Scotland and Fife

Case 200503036: Fife Council

Summary of Investigation

Category

Local government: Planning and Roads

Overview

The complainant (Mrs C) was concerned that her neighbour (Mr A) had erected a wall with gateposts and a gate on land which was intended as a two metre wide service strip and was aggrieved that Fife Council (the Council) had not required the removal of the wall and gate. She claimed the wall impeded access to refuse collection vehicles and presented a danger to pedestrians.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to take appropriate action with regard to the wall built by her neighbour on the service verge (*upheld*).

Redress and recommendation

The Ombudsman recommends that her report be placed before the relevant committee of the Council for them to consider whether the complainant's neighbour should be invited to regularise the position with regard to building standards and apply for planning consent.

Main Investigation Report

Introduction

1. The complainant (Mrs C) resides in a modern detached house at the head of a cul-de-sac in an estate of 150 houses in a Fife town. Mrs C has confirmed that the title deeds for her property, which she understands also apply to her neighbour (Mr A), stipulate that there should be no building on a two metre wide service verge adjacent to the carriageway. Mrs C is aggrieved that her neighbour built a wall on the service verge on his property with gateposts and a metal gate.
2. The complaint from Mrs C which I have investigated is that the Council failed to take appropriate action to require Mr A to remove the wall and gate.

Investigation

3. I have not included in this report every detail investigated but I am satisfied that no point of significance has been overlooked. Mrs C and the Council have had the opportunity to comment on an earlier draft of this report.
4. The houses in the estate in which Mrs C resides were the subject of an application for full planning consent in 2001. As part of the consideration of that application, Planning Services consulted with Transportation Services. Transportation Services commented on the application in a memorandum of 24 April 2001 but did not specifically seek a restriction in relation to permanent development within the service verge areas. The Council's Chief Executive stated that the planning consent granted on 15 May 2001 did not include a standard condition (TN13) relating to prohibiting construction within the service strip. In terms of their responsibilities, Transportation Services issued roads construction consent on 1 June 2001.
5. The particular roadway in the estate was deemed to be a category 6 road of 4.5 metres in width which, since it did not incorporate footpaths, required a 2 metre wide service verge for public utilities etc to locate their services and equipment. I understand that such verges are also intended to enable pedestrians to step off the carriageway when confronted by vehicles and to facilitate vehicle movements in the vicinity of turning heads.

6. In early 2003 Mr A wrote to Planning and Building Control stating that he intended to erect a boundary wall at his property in his front garden over the service verge. He was informed by reply of 13 March 2003 from a Development Control Technician (Officer 1) that he had checked the terms and conditions of the 2001 planning consent. Officer 1 confirmed that, provided the proposed boundary wall did not exceed more than one metre in height from ground level, formal planning consent would not be required. Officer 1 also stated that he had checked with his colleagues in Building Control. He confirmed that a building warrant would not be required unless the wall exceeded 1.2 metres in height from ground level. The letter of 13 March 2003 did not refer to any other possible approvals which might be required.

7. Mr A subsequently commenced constructing the wall and it was substantially complete at 30 May 2003. On 17 June 2003 and 8 July 2003 Transportation Services wrote to Mr A confirming that the wall should be taken down and re-located 2 metres behind the carriageway kerbing. Mr A responded by making a formal complaint on 26 July 2003 to the Chief Executive. He stated the wall had cost him £8000 and instanced examples in the same town where similar walls had been permitted.

8. Mr A's letter was acknowledged on 31 July 2003. The then Chief Executive obtained the comments of the Area Transportation Manager (Officer 2), and the Area Development Services Manager (Officer 3). The response from Officer 3 of 15 August 2003 confirmed that the wall was acceptable in planning and building control grounds, but that in their letter of 13 March 2003 it had not been drawn specifically to Mr A's attention that other consents might be required. Officer 2 responded by memorandum of 28 August 2003. He stated that if the wall was permitted to remain in position adjoining a turning area it would restrict vehicles turning and the lack of a service strip would prevent pedestrians, threatened by turning vehicular traffic, from taking evasive action. The former Chief Executive also obtained and scrutinised a copy of Mr A's title deeds. He noted that these contained a legal obligation on Mr A and his neighbours to maintain the service verge free of obstructions.

9. The former Chief Executive responded to Mr A on 25 September 2003. He accepted that there had been failings by the Planning Service from which Mr A

understandably, but mistakenly, had assumed he had all the necessary approvals from the Council to proceed with the building of the wall. In the circumstances, the former Chief Executive did not think it right for the Council to proceed with action for the removal of the wall. The Council and other organisations, however, had rights to access services under the verge and those rights remained. The Chief Executive considered that in the event that Mr A was to sell his property, then the Chief Executive's letter should be included with the title deeds in order that any new purchaser would be made aware of the right of access to services within the service verge.

10. Mr A wrote to the Chief Executive on 6 October 2003 thanking him for his intervention and stated he would instruct his solicitors accordingly. Following further contact between a Council solicitor and Mr A's solicitors, the former wrote to Mr A's solicitors on 6 January 2004 confirming that the Council would not enforce the breach of the title conditions. The Council's earlier file on the matter of Mr A's complaint was then closed.

11. Mrs C stated that Mr A had accused her in the year 2003 of being the instigator of action to prevent the wall being completed (when in fact it had been a Council Officer who first noted the wall in course of being built). This accusation had led to deteriorating relations between Mrs C and Mr and Mrs A. Mrs C had suffered stress during 2004 and had not, therefore, pursued the matter with the Council until the following year when she felt she had to make a stance.

12. On 26 April 2005 and 2 May 2005, Mrs C wrote letters to Environment Services, Transportation Services, Building Control and Planning Services. She alleged that there was no gap between the carriageway and Mr A's wall, that part of the wall was higher than one metre and that a bollard (gatepost) had been built by Mr A on the service area. Only Building Standards responded (on 11 May 2005) to say that the position of walls or bollards in relation to service areas and roads was not covered by Building Standards.

13. On 27 June 2005, Mrs C's solicitors wrote to the Chief Executive stating that the work undertaken by Mr A in extending his boundary wall was in clear breach of the title conditions and encroached on the designated service area. This caused a severe problem for refuse vehicles attempting to turn. Mrs C's solicitors stated that

the problem was exacerbated because Mr A and his visitors parked in the turning area. They observed that the wall rose to a height of 1.5 metres (at the gateposts) and the boundary wall enclosed an area where a street lighting standard is erected. The solicitors also stated that Mrs C was aggrieved that no action had been taken in response to her letters of April and May 2005 (paragraph 12).

14. The solicitors' letter of 27 June 2005 was received but misplaced. Following a reminder, the Chief Executive's office responded on 9 August 2005 informing the solicitors of the complaints procedure. The complaint was then passed to the Head of Development Services and to Officer 3. Officer 3 responded to the solicitors on 16 August 2005. His letter referred briefly to past events and confirmed that the final outcome had been that Transportation Services and Development Services had been instructed to take no further action.

15. Officer 3 stated that Mr A's alleged threatening behaviour towards Mrs C and verbal abuse were matters for the police to investigate as was Mr A's parking of vehicles if these caused an obstruction. If the boundary wall breached title conditions, then that was a matter for the solicitors to pursue on behalf of Mrs C.

16. This letter was passed to Mrs C by her solicitors on 22 August 2005. She did not give them further instructions. She did, however, raise the matter with her local councillor who wrote on her behalf on 29 November 2005 referring (a) to the alleged difficulties with Mr A and his threatening behaviour towards her; and (b) to the building of the wall. The Chief Executive responded on 18 January 2006. He stated that (a) was a matter for Fife Police. With regard to (b) he enclosed a copy of Officer 3's letter of 16 August 2005. He did not refer to his own decision on 25 September 2003 but stated that if the matters were a breach of the conditions of the legal title of the land, Mrs C might wish to pursue these with her solicitors.

17. Mrs C was not happy with this reply and wrote to the Ombudsman on 4 February 2006. To assist me in considering the complaint, the Council provided me with relevant correspondence relating to Mr A's dealings with the Council in 2003. The new Chief Executive also responded on 22 June 2006 to my letter of 22 May to his predecessor.

18. The Chief Executive confirmed that Environmental Services had no record of any access problems for refuse collection vehicles but that access problems would always be related to the number of parked cars on the carriageway on the day of the refuse collection. He also stated that, after the former Chief Executive's letter of 25 September 2003, Mr A had placed ornamental balls on top of the gatepost piers extending the height at that point to almost 1.5 metres. The metal gates which had been erected measured approximately 1.4 metres in height. Given that the then Chief Executive had allowed Mr A to retain the wall, Development Services decided not to pursue enforcement action in respect of the gates or piers unless otherwise advised. The present Chief Executive confirmed that roads and footpaths in the estate had subsequently been adopted by the Council as roads authority.

19. Officer 3, now the Council's Development Manager (Development and Regeneration), confirmed that the gate and posts as installed require to be considered as part of the wall and as the height exceeds 1.2 metres, then a building warrant was required as originally advised. However, the legislation changed with effect from 1 May 2005 with the commencement of the Building (Scotland) Act 2003. The position now is that a late certificate submission could be requested. Officer 3 stated that the assessment of building proposals is a purely technical matter, does not take into account land ownership or other statutory consents, the process provides no scope for third party consultation or interventions and, in Fife, is delegated to officers to resolve. Officer 3 also confirmed that with regard to planning consent, since the height of the wall in question exceeds one metre, planning permission is required.

Conclusion

20. I am sympathetic to Mrs C's circumstances. She is not happy that Mr A's wall and gates have been constructed and, according to her account, her relations with Mr A have deteriorated because he mistakenly thinks she tried to halt the wall being constructed in 2003.

21. I consider it to be an oversight that standard planning condition TN13 was not imposed in the overall planning consent for the estate in 2001. Had that condition been inserted, then when Mr A sought guidance in 2003 before constructing the wall, the response would have been that it was not permitted development and at

the very least would have required an application for planning consent. Mrs C would have received neighbour notification and there is a strong possibility that her objection might have prevailed and that planning consent might have been withheld. However, the circumstances of this case were that Mr A assumed that subject to height restrictions, he could proceed.

22. The former Chief Executive considered that since Mr A proceeded in good faith on the basis of information given by a Council Officer, the Council might be held responsible for his costs should they require its removal. He took what might be described as a pragmatic view in September 2003 and sought to avoid the costly option for the authority of taking down the wall and gate while ensuring that Mr A understood that he would require to remove the wall at his expense should access be required. That decision obviously satisfied Mr A but did not have regard to the impact on his neighbours and the consequences for pedestrian movement on the category 6 road. He also made no reference as to whether the wall and gate at that time materially breached the height where planning consent, and possibly also a building warrant, was required.

23. The dimensions of the gate and piers constructed by Mr A are stated to be higher than those stipulated in Officer 1's letter of 13 March 2003. Technically, as built, they required planning consent and building warrant. If they considered it expedient to do so then the relevant committee could still require Mr A to take action to regularise the matter in terms of building standards and to submit an application for planning consent. If the latter were to be refused, they could instruct enforcement action.

24. Taking all the circumstances of this case into account I uphold Mrs C's complaint.

Recommendation

25. The Ombudsman recommends that her report be placed before the relevant committee of the Council for them to consider whether the complainant's neighbour should be invited to regularise the position with regard to building standards and to apply for planning consent.

28 November 2006

Explanation of abbreviations used

Mrs C	The complainant
Mr A	Her next door neighbour
The Council	Fife Council
Officer 1	Development Control Technician
Officer 2	Area Transportation Manager
Officer 3	Area Development Services Manager now Development Manager (Development and Regeneration)