

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200500533: Fife Council

#### Summary of Investigation

##### **Category**

Local government: Roads; Parking

##### **Overview**

The complainant (Mr C) raised specific complaints about restrictive off-road vehicle access to and from his driveway and the way in which Fife Council (the Council) dealt with their subsequent application of white road markings.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Council put white road markings intended to assist with Mr C's vehicle entry to and exit from his house in the wrong place, opposite his neighbour's driveway instead of his own (*not upheld*); and
- (b) the Council failed to comply with their offer to provide a footway crossing at the Council's expense (*not upheld*).

##### **Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 23 October 2005, the Ombudsman received a complaint from a man (referred to in this report as Mr C) against Fife Council (the Council), that access by car to and from his driveway was impeded by his neighbour's parking habits. Since 13 March 2003 when the Council refused Mr C's application for a Disabled Person's Parking Bay, Mr C has pursued his complaint about off-road parking with the Council, requesting that they take action (by painting white road markings) to ensure he has unimpeded vehicle access to and from his driveway. Mr C has also sought support for this complaint from the Police, a local Councillor (the Councillor), Doctor (the Doctor) and Solicitor (the Solicitor). In an open 'to whom it may concern' letter from the Doctor dated 15 November 2004, the Doctor stated that Mr C suffers from a circulatory problem affecting his lower limbs. According to the Doctor this condition impairs Mr C's mobility and it is advisable that he exercises by walking as much as possible. By travelling to destinations in his own adapted car, this allows Mr C to walk in other surroundings.

2. Mr C has a footway crossing outside his house and the Council stated that he has never formally applied for, or was granted permission by them, for the footway crossing. The Council and Mr C agree that the footway crossing was installed by the previous tenant 51 years ago.

### *Background*

3. In a letter dated 25 March 2005 from the Council to the Solicitor, both agreed that Mr C's home is situated in a narrow street and all residents experience difficulty manoeuvring in and out of driveways, particularly if other vehicles are parked on-street. The Council stated that Mr C is the only street resident to whom they have given courtesy markings, to help with this situation.

4. The complaints from Mr C which I have investigated are that:
- (a) the Council put the white road markings intended to assist with Mr C's vehicle entry to and exit from his house in the wrong place, opposite his neighbour's driveway instead of his own; and
  - (b) the Council failed to comply with their offer to provide a footway crossing at the Council's expense.

## **Investigation**

5. The investigation of this complaint involved obtaining and reading all relevant documentation, including correspondence between Mr C and the Council and correspondence from the Doctor, the Local Councillor, the Police Officer and the Solicitor.

6. A written enquiry was made of the Council on 20 February 2006 and their response was received on 9 March 2006.

7. A telephone interview was conducted with the Council's Senior Manager of Transportation Services (the Manager) on 1 February 2007.

8. 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.

### **(a) The Council put white road markings intended to assist with Mr C's vehicle entry to and exit from his house in the wrong place, opposite his neighbour's driveway instead of his own**

9. Mr C acknowledged that the Council, in an effort to help facilitate easier access to his driveway, painted white road markings. However, Mr C states these are wrongly placed.

10. In their response to my enquiries the Council explained that the type of markings that Mr C refers to are white 'H' bar markings and these are used to identify driveways where disabled people live (they can also be used in town centres where driveway access may be frequently blocked).

11. The Council stated that they have no written policy regarding their provision and outline that Mr C is aware these markings are not enforceable.

12. The Council told me that they could not provide Mr C with the 'H' bar marking opposite his driveway in the position that he wished. The Council offered several reasons for this, principally that to do so could cause street congestion. The Council stated that they have to take into account the needs of all residents in X Street when considering street space. The Council have visited Mr C's location and acknowledge in their letter to the Solicitor of 25 March 2005 that a left turn from Mr C's driveway may be awkward, but 'a right turn will always be easily achieved'. They added 'to assist Mr C as far as

possible (the Council) placed the 'H' bar marking across a neighbour's drive diagonally opposite Mr C's driveway and stretched it as far as is reasonable in Mr C's direction'. The Council stated that they took this decision in order to provide Mr C with improved manoeuvrability and commented that in their opinion this has been generally successful, however, they agree that there can be occasions when visitors park on the markings. According to the Manager, 'adherence to these lines relies on goodwill as they are not enforceable either by Transportation Services or the Police'.

*(a) Conclusion*

13. I understand Mr C's frustration that there can be occasions when he finds that he is unable to have unimpeded car access to and from his driveway, but the Council cannot be held responsible for the parking behaviour of either residents or visitors to the street. Following Council visits to the location, they tried to help Mr C by positioning and painting the white markings, although not in the position Mr C wished. I also acknowledge that the Council are not obliged to paint white markings but they did so in order to assist Mr C. Taking account of the fact that the provision of these markings is not legally enforceable and that the Council has to ensure that they meet the on-street parking and access rights of all residents in X Street, I consider that the Council's decision about the positioning of the markings was reasonable. I do not, therefore, uphold this complaint.

*(a) Recommendation*

14. The Ombudsman has no recommendations to make.

**(b) The Council failed to comply with their offer to provide a footway crossing at the Council's expense**

15. Mr C stated that he never applied for the existing crossing, as it has been in position for 51 years and was put there by the first tenant of the property. In the Councillor's letter to Mr C dated 10 September 2003, the Councillor stated that the Manager had agreed that the footway crossing met the Council's standard and, if it required any future upgrading, the cost would be met by the Council. The Manager explained in his letter to Mr C dated 22 September 2005 that Mr C's driveway did not have a footway crossing permit that is normally required before construction. However, as the footway crossing had been in place for such a long time without a permit, the Council would not take any action against Mr C.

16. The Manager told me and confirmed this in writing on 1 February 2007 that when he met with the Councillor during September 2003, the Councillor's statement that 'when the footway is upgraded a proper crossing will be constructed at cost to the Council' - did not fully explain the Council's position. If Mr C wished the footway crossing to be upgraded to assist accessing his driveway, Mr C would need to apply for a Footway Crossing Permit and to carry out the work at his expense. Only if the Council was to replace the footway along Mr C's side of the road would the Council upgrade the footway crossing at the same time at no expense to Mr C as part of these works. In other words, it is the cost of a dropped crossing that the Council would meet.

17. In their response to my enquiries, the Council confirmed that Mr C had not formally applied for or been granted permission for a footway crossing, however, they have recognised Mr C's 'long term usage of this access carriageway' and waived his requirement to have a permit. The Council also stated that they have never offered to provide Mr C with a footway crossing free of charge, nor do they have plans to reconstruct the footway outside his house.

*(b) Conclusion*

18. I have carefully considered all the documentation Mr C and the Council have provided and I can find no evidence to support Mr C's belief that the Council offered to provide a footway crossing free of charge. I agree that the Councillor wrote to Mr C and stated that the Council would cover the costs when the footway was upgraded, but a single Councillor's statement cannot be taken as a Council decision. I can understand how Mr C was misled by the Councillor's statement, but the Council have explained that this statement referred to only the dropped crossing (during footway reconstruction) that the Council supplies to everyone that is free of charge. In the absence of evidence that the Council offered to provide a footway crossing at their expense, I do not uphold this complaint.

*(b) Recommendation*

19. The Ombudsman has no recommendations to make

27 March 2007

**Explanation of abbreviations used**

Mr C	The complainant
The Council	Fife Council
The Police	Fife Constabulary Community Inspector
The Councillor	Fife Councillor
The Doctor	Mr C's doctor
The Solicitor	Mr C's solicitor
The Manager	Council's Senior Manager of Transportation Services
X Street	The street where Mr C resides