

**Case 200503204: The City of Edinburgh Council**

**Summary of Investigation**

***Category***

Local government: Land and property; Sales and leases of property including excambions

***Overview***

The complainant (Mrs C) was unhappy that The City of Edinburgh Council (the Council) had agreed to sell some land to a neighbour and to also allow the neighbour to garden some land owned by the Council.

***Specific complaints and conclusions***

The complaints which have been investigated are:

- (a) the decision of the Council to sell the land (*not upheld*); and
- (b) the decision of the Council to allow a neighbour to garden some land owned by the Council (*not upheld*).

***Redress and recommendations***

The Ombudsman recommends that the Council:

- (i) ensure all relevant staff dealing with a land purchase application are informed when complaints are being considered;
- (ii) ensure that complainants are kept informed of the progress of their complaint; and
- (iii) clarify the maintenance arrangements for the land with Mrs C.

The Council have accepted the recommendations and will act on them accordingly.

## **Main Investigation Report**

### **Introduction**

1. Mrs C initially complained to The City of Edinburgh Council (the Council) that a communal grassed area had had shrubs and flowerbeds placed on it. She then became aware that the Council had agreed to sell the land to a neighbour (Miss B). The land was in front of Miss B's home, a path separated this land from the flats where Mrs C lived. On 5 August 2005 Mrs C wrote to say she opposed any sale of communal land and that this land was a communal drying area. On 9 August 2005 the Council wrote to Mrs C to say the sale was suspended.

2. After further correspondence, on 2 November 2005, the Council wrote again to say Miss B would be given the option to purchase a one metre strip to the front and side of her home but no other part of the land outside her home. It was decided the larger area of ground would be turfied and retained in Council ownership.

3. Mrs C complained again saying that the one metre strip should be retained in Council ownership and stressed again that although owned by the Council she considered that it was communal land. She said there was no need for the land to be sold to provide additional privacy as there were no windows to the side of the house and many houses in the estate did not have private gardens at the front. In a letter of 23 December 2005 the Council wrote to Mrs C to say that they had considered her complaint but that the decision to sell the one metre strip would remain. They also said that Miss B would be required to reinstate turf next to the path but that the Council would no longer insist on immediate reinstatement of the other planted areas. Mrs C and Miss B both complained separately to the Ombudsman.<sup>1</sup>

4. The complaints from Mrs C which I have investigated are that:

- (a) the decision of the Council to sell the land; and;
- (b) the decision of the Council to allow a neighbour to garden some land owned by the Council.

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<sup>1</sup> The report into Miss B's complaint is report number 200502683.

## **Investigation**

5. In investigating this report, I have reviewed relevant correspondence between Mrs C, Miss B and the Council, and internal Council documentation. I have seen photographs of the land in dispute.

6. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

### **(a) The decision of the Council to sell the land and (b) the decision of the Council to allow a neighbour to garden some land owned by the Council**

7. Mrs C lives in a former Council flat. Miss B lives in a former Council house opposite the block of flats. In front of Miss B's house is a grassed area owned by the Council. On Mrs C's deeds this is referred to as communal grassed area and drying green. This area of land is bounded by a path that runs in front of the block where Mrs C lives. On 28 June 2005 Mrs C complained that removal of turf had led to the communal path being undermined. This was inspected on 29 June 2005 and a local housing officer (the officer) said that this path was found to be dangerous and Miss B told not to do any more work on this. Miss B told the officer she had applied to purchase the land.

8. The officer returned to the area on 6 July 2005 to review the work required. Mrs C complained to him in more detail and said that the communal grassed area in front of Miss B's house had had shrubs and flowerbeds placed on it. Mrs C then became aware the Council intended to sell the land between Miss B's house and the path to Miss B. She spoke to a neighbourhood manager on 22 July 2005 raising her concerns about this. An internal report had recommended acceptance of Miss B's application and was signed on 22 June and 1 July 2005. Following the conversation with Mrs C, an internal Council email dated 27 July 2005 said that it now appeared the land could be a common drying green that could not be sold.<sup>2</sup> The email also said that a site visit and photographs had shown no evidence of clothes poles and 'House Sales' had not indicated it was a common drying area. On 5 August 2005 Mrs C wrote to complain formally. On 9 August 2005 the Council wrote to both Mrs C and Miss B to say the sale was suspended.

9. This letter explained that Miss B had initially applied to purchase a one

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<sup>2</sup> I have seen Miss B's application which clearly labelled the ground a drying green.

metre strip but then applied for a wider area. Permission had initially been given to proceed with the one metre strip but been suspended when objections were raised as this had been designated a communal grassed area when Mrs C purchased the property. The letter concluded by saying that Miss B would be given the option of returning the ground to its original state after which it would be maintained by the Council or leaving it as it was and taking over the responsibility of maintaining it herself.

10. Mrs C wrote to object to the decision to leave the ground as it was and to allow Miss B to continue to maintain the land. This letter included a petition signed by other neighbours supporting this position. This was acknowledged in a letter of 1 September 2005. The Council said they were still considering this and hoped to write to Mrs C in more detail in the week beginning 19 September 2005. On 31 October 2005 Mrs C received a letter which said the neighbourhood manager had confirmed no land was being sold to Miss B. On 2 November 2005 the Council wrote again to both Mrs C and Miss B. This letter said that Miss B was to be given the option to purchase the one metre strip to accord her some privacy. It was decided the remaining area of ground between Miss B's house and the path would be retained in Council ownership.

11. The letter went on to say that there was a plan to offer all owners in the area the opportunity to purchase land in the area still owned by the Council and that, ultimately, no ground would be retained by the Council. They said they did not have the staff to organise this at present and would not go ahead with 'piecemeal sales' as this could lead to problems with access and maintenance and disadvantage owners and residents who had not been given the opportunity to purchase land. On 6 November 2005 Mrs C wrote in detail complaining about the decision to sell the one metre strip (see paragraph 3).

12. On 23 December 2005 the Council sent letters to Mrs C and Miss B confirming the decision of 2 November was upheld. They said that as the owner of the ground they had the right to dispose of it as they felt appropriate. They said they accepted there were two conflicting views on the preferred use and that the decision to sell the one metre strip was an attempt to broker a compromise to minimise the distress for all concerned while going some way towards addressing individual concerns.

13. The Council said that their final decision was that the sale of the one metre strip could go ahead. Miss B would be required to reinstate turf which had been

removed from the path. The Council would not insist on the immediate reinstatement of the other planted areas although this might have to be reviewed if they impeded Council maintenance of the area. The Council suggested a meeting be held to discuss this further.

14. The meeting was held on 12 January 2006. Mrs C did not attend. At the meeting it was agreed that Miss B could maintain the areas she had planted but otherwise the decision of the Council was unchanged.

15. Mrs C submitted a Freedom of Information request on 6 January 2006 asking for more detail about the decision. In their response of 31 January 2006 the Council confirmed that in making decisions regarding communal land the Council considered the interest of those living nearby, the whole community and the Council. They also added that the sale of a one metre strip next to Miss B's house would not have a significant detrimental effect on the Council or any other party. They said that the areas planted by Miss B arguably enhanced the environment and it was not in anybody's interest to insist on their reinstatement.

*(a) Conclusion*

16. The Council have chosen to compromise between the competing views of Mrs C and Miss B in coming to a decision to only sell part of the land. I do not dispute their right to do so and, in the circumstances, it would be hard to dispute their reasoning that selling the one metre strip directly adjacent to Miss B's home would not reduce amenity to the Council or any other party. I should also add that aspects of their handling of Mrs C's complaints have been of a good standard, with the Council taking Mrs C's concerns seriously, acting swiftly when it became clear there were problems with the sale, informing Mrs C of her options to appeal further at each stage of the process and attempting mediation.<sup>3</sup> However, I am concerned that the administration of a minor land transaction has at times exacerbated a difficult situation between two neighbours with opposing views. I appreciate that this is a matter which will seem clearer in hindsight, but I have noted that the Council did not seek views again in the light of Miss B's request to purchase a larger area. Additionally, although the email of 27 July 2005 shows Council officers were aware there would be difficulties if a drying green was sold to Miss B, the land was clearly labelled such in the initial plan submitted by Miss B to the Council. While this shows that the problem could perhaps have been dealt with sooner, the Council

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<sup>3</sup> See details of the meeting in paragraph 14

did though respond appropriately when aware of Mrs C's concerns.

17. There were also failings in communication. There is no doubt the letter of 31 October 2005 to Mrs C (paragraph 10) gave the wrong impression that this had been finally decided when, in fact, the Council were still reconsidering this matter in the light of Miss B's concerns. Therefore, while I do not uphold this complaint on the basis that the decision to sell was made appropriately within the Council's discretion, the Ombudsman makes the following recommendation.

*(a) Recommendation*

18. The Ombudsman recommends that the Council:

- (i) ensure all relevant staff dealing with a land purchase application are informed when complaints are being considered; and
- (ii) ensure that complainants are kept informed of the progress of their complaint.

*(b) Conclusion*

19. From the description of events in paragraphs 7 to 15, it is clear that the Council have changed their minds about whether or not to have the whole area returned. This has though been in response to requests to reconsider from one or both parties and I do not find this unreasonable. Having seen pictures of the area, the gardening would appear to add to the amenity of the area and there is nothing to prevent the Council allowing Miss B to maintain the planting. It is not though clear that they have always fully explained this to Mrs C, particularly following the meeting in January 2006. Therefore, while I do not uphold this aspect of the complaint, the Ombudsman make the following recommendation.

*(b) Recommendation*

20. The Ombudsman recommends that the Council clarify the maintenance arrangements for the land with Mrs C.

21. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

23 May 2007

**Explanation of abbreviations used**

Mrs C	The complainant
Miss B	Mrs C's neighbour
The Council	City of Edinburgh Council
The officer	A local housing officer