

Scottish Parliament Region: Central Scotland

Case 200600026: East Ayrshire Council

Summary of Investigation

Category

Local government: Recreation and Leisure\Parks, outdoor centres and facilities and complaint handling

Overview

The complainants (Mr and Mrs C) have complained that East Ayrshire Council (the Council) have not responded appropriately to their concerns about injuries and damage to their property by users of a football field.

Specific complaint and conclusion

The complaint which has been investigated is that the Council have not taken appropriate action following injury and damage to property caused by the use of a Council owned sports field (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make

Main Investigation Report

Introduction

1. On 25 April 2006 the Ombudsman received a complaint from a married couple (Mr and Mrs C) that East Ayrshire Council (the Council) had not acknowledged or rectified the personal injury and damage to property experienced by them and their family as a result of footballs from the adjacent sports field entering their garden.

2. The complaint from Mr and Mrs C which I have investigated is that the Council have not taken appropriate action following injury and damage to property caused by the use of a Council owned sports field.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr and Mrs C and the Council and the Council's file on the investigation of Mr and Mrs C's complaint. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council have not taken appropriate action following injury and damage to property caused by the use of a Council owned sports field

4. In September 2004 Mr and Mrs C purchased a house (House A) whose gable end and boundary (marked by a fence and hedging) runs parallel to a sports field, marked with a football pitch, owned by the Council.

5. In May 2005 Mrs C had raised with the Council that scheduled games of 7-a-side football between organised youth teams were taking place across the width of the pitch. This meant goals were set up parallel with the boundary of her home and garden and off-target goal attempts were striking the gable end or entering her garden. This had also happened when people used the football field on an informal basis. Mr and Mrs C had to make repairs to their property, minor injuries had occurred and Mr and Mrs C were concerned that more serious injury could occur. The Council visited Mr and Mrs C at home to discuss this. Mr and Mrs C made it clear that they did not wish to stop games of football being played on the field, but asked that games being played across the pitch be played in the half furthest from their property. The Council have told

me that they contacted the organiser of the 7-a-side football team requesting that games be played in the half of the field farthest from House A, but have been unable to locate a copy of the correspondence.

6. The problems continued, both during organised games and ad-hoc games and in June 2005 Mrs C called the Council to discuss them. As well as the issue of footballs entering the garden, Mrs C also complained that footballs being kicked against the gable end of House A were causing damage. She requested that a six metre high fence be erected between the boundary of her house and the football field. The Council told me that the Outdoor Amenities Manager offered to meet with Mrs C but that, in response to this, Mrs C asked if the Council would be erecting the fence requested and when she was told they would not, she declined the offer. Mrs C told me that she does not believe that this offer was made.

7. The Council wrote to Mrs C, formally telling her that they would not erect the requested fence because it would not be practical and would not provide any additional protection to her garden and noting that she already had a three metre high hedge. They also advised Mrs C that the issue of footballs being kicked against her wall was essentially a police matter and gave contact details of the Community Police Officer.

8. On 12 July 2005 Mrs C wrote to the Chief Executive of the Council. She requested a meeting with the Chief Executive as she was unhappy with the previous responses and action of the Council. The Chief Executive responded to Mrs C on 21 July 2005, indicating that she would review the complaint in line with the Council's complaints procedure, and agreeing to the meeting.

9. The meeting was held on 1 September 2005, and was attended by the local Community Police Officer as well as the Chief Executive and Mr and Mrs C. Mrs C raised several issues with the Chief Executive, who promised to respond to these issues in writing within two weeks. On 13 September 2005 the Chief Executive wrote to Mrs C with further information about the issues discussed. The Chief Executive told Mrs C that the Council had written again to the organiser of the 7-a-side football team reminding them of the earlier letter and requesting that they only play on the half of the pitch furthest from House A. I have had sight of this letter, dated 8 September 2005, from the Council to the organiser of the 7-a-side football team. In her letter of 13 September 2005, the Chief Executive also responded to issues Mrs C had raised relating to her

enquiries of the Police prior to purchasing House A. She had asked the Police whether any problems between residents of House A and users of the football field had been reported. The Chief Executive advised Mrs C that staff in the relevant department of the Council could not recall any contact from the Police on the issue at that time and told Mrs C that no complaints had been registered with the Council regarding use of the football field previous to her purchase of House A. Finally, the Chief Executive told Mrs C that the Council were making checks with Registers Of Scotland to ascertain the precise specification of the boundary between the land of House A and the football field.

10. The Chief Executive wrote again to Mrs C on 17 October 2005. In this letter the Chief Executive told Mrs C that, following further investigation, the Council had concluded that they had a responsibility to maintain the boundary as existing between the football field and House A at the time of the Council's purchase of the football field in 1981. These were defined in the titles as a fence, dyke and hedge. The Council concluded that they had no responsibility to improve the boundary and that the physical boundary lay outside the land they owned. The Council also noted that the titles to House A only include half the width of the boundary, whilst the Council's titles to the football field end at the north-most face at the boundary. The Council concluded, therefore, that ownership of the other half of the boundary remained with the previous owners of House A. The Chief Executive stated again that the Council had no record of previous complaints about footballs entering the garden of House A and that, in her view, when considering the purchase of a property sharing a boundary with a football field it was 'reasonably foreseeable' that footballs may enter the garden from time to time. Finally, the Chief Executive stated that as the Council had no legal obligation to improve the boundary, they would not erect the six metre high fence Mrs C had requested. She also stated that if Mr and Mrs C wished to erect such a fence the Council would consider their request.

11. Following a telephone conversation on 18 October 2005, the Council's Head of Administrative and Legal Services wrote to Mrs C confirming the opinion given in the Chief Executive's letter on the ownership of the boundary between House A and the football field and enclosing the documents on which this opinion was based for Mr and Mrs C to present to their solicitor.

12. Mr and Mrs C have advised me that they do not believe that the previous owners retain ownership of any of the land in question.

13. In November 2005 Mrs C spoke to a coach of a football team using the pitch and he told her that the team had also asked the Council to erect fences in order to limit damage to property, annoyance to residents and ball losses. Shortly after this conversation, Mrs C wrote to her MSP outlining the problems she had faced and requesting that her MSP contact the Council.

14. The Council have advised me that they have no record of any written or verbal requests from the organiser or coach of any football team asking that a fence be erected.

15. Mrs C's MSP passed her letter to the Chief Executive of the Council who responded to her, laying out the Council's position as she had stated to Mrs C (see paragraphs 9 and 10). She also noted that the existing fence would be inspected and repaired by the Council and undertook to update the MSP on the anti-social behaviour issues related to the football field. Mrs C's MSP passed this response back to Mrs C. The Chief Executive wrote to the MSP with an update on the anti-social behaviour issues on 6 January 2006. She noted that two incidents of anti-social behaviour had been reported in the previous few months and that these had been dealt with by the Police. The MSP passed this letter to Mrs C on 12 January 2006.

16. The existing fence was inspected and repaired and the Council have advised me that visual inspections are carried out during grass cutting operations, and that this takes place approximately 30 times during the 'growing season' from April to October, and twice in the winter.

17. Mrs C telephoned the Chief Executive's office in January 2006 and asked why a fence could not be erected parallel to the boundary of House A when a fence had been erected at another football field nearby and requested a further meeting to discuss the issues she had raised. The Chief Executive wrote to Mrs C on 19 January 2006 explaining that as the houses at the other football field are directly behind the goals the Council had erected a fence at that point, and that another fence had been erected there following a serious accident involving children falling into a river that runs alongside that field. The Chief Executive stated that she could not see what purpose a further meeting would serve, declined the offer and noted that she now considered the matter closed.

18. On 4 April 2006 Mrs C wrote again to the Chief Executive. Mrs C said that she did not feel the circumstances at the other football field differed from those

at the football field adjacent to House A, that ad-hoc games of football were still causing footballs to enter her garden, that she did not believe the Council had answered the issues she had previously raised and gave an account of encounters she had had with the organisers, members and families of football teams using the field. She asked the Chief Executive to respond to the issues raised in the letter she had sent to her MSP in November 2005.

19. On 25 April 2006 Mr and Mrs C wrote to the Ombudsman outlining their complaints.

20. The Chief Executive replied to Mrs C on 9 May 2006. The Chief Executive indicated that she believed all the points Mrs C had raised had been responded to in her previous letters, including those that had been sent via Mrs C's MSP. The Chief Executive reiterated that she believed the circumstances at the other football field to be different, that the Council had no obligation to erect the requested fence and that she saw no benefit in a further meeting with Mrs C. She noted the account Mrs C had given of her encounter with the organiser of a local football team and advised that the Council would write again to the organisers clarifying their responsibilities. I have had sight of the letter of 3 May 2006 from the Council to the organiser of the football team.

21. During my investigation Mr and Mrs C contacted me to advise that fencing had been erected around the pavilion on the football field. They told me that the Council advised them that this was erected to prevent damage and vandalism. I contacted the Council who told me that the fence had been erected to protect the property and to prevent young people congregating in recess doorways and under the overhanging roof of the property. They advised that the fence was similar to other fences erected around other such pavilions in the area and that a local elected member and the Police had requested the fence be erected.

Conclusion

22. In responding to Mrs C's complaints the Council have clearly set out their responsibilities as owners of the football field. The Council cannot be held responsible for the actions of people using a public football field on an ad-hoc basis and they properly advised Mrs C that anti-social behaviour problems were a matter for the Police. It is reasonable that in considering whether to reside next to a football field it should be expected footballs will enter the vicinity of the property. It is also reasonable that the owners of the field should take action to minimise this in the area directly behind the goals, which is the area most likely

to be affected by such a problem. The Council have constructed fences in this position at both football fields referred to in this report. Properties adjacent to other areas of the field should not experience this problem so frequently and it would not be a reasonable use of Council resources to provide further fences.

23. The Council have taken steps to minimise the frequency of organised games being played across that half of the pitch adjacent to House A, in corresponding with the organisers of the football teams who register with the Council to play there. The Council have explained the different circumstances at each football field and given clear reasons for the additional fencing at the field adjacent to the river. The Council have also explained their opinion of their legal responsibilities in relation to the boundaries of the football field and demonstrated that the title to the field does not indicate that they have a responsibility to improve the boundary, only to maintain it. In response to Mrs C's complaints the Council have repaired the existing fence and indicated that they will continue to regularly inspect and maintain the boundary. They have also indicated that, should Mr and Mrs C wish to lodge an application to construct the type of fence they desire, the Council would be willing to consider their application. Similarly, the Council have erected a fence to protect and maintain the pavilion on the football field, which is their property. It is reasonable for the Council to indicate that Mr and Mrs C should be responsible should they wish to protect House A in a similar fashion.

24. In relation to the land ownership question, the Council have maintained a reasonable legal position and provided Mr and Mrs C with an explanation of their understanding of that position. I note that Mr and Mrs C do not agree with this position but it is not appropriate for the Ombudsman to provide an opinion on such legal matters. The Council have demonstrated that in responding to Mrs C's complaints they have undertaken a thorough investigation and provided clear communication to Mrs C. I consider that the Council have acted reasonably and appropriately in response to the concerns raised by Mrs C. Therefore, I do not uphold the complaint.

Recommendations

25. The Ombudsman has no recommendations to make

20 June 2007

Explanation of abbreviations used

Mr and Mrs C

The complainants

The Council

East Ayrshire Council

House A

The property owned by Mr and Mrs C