

Scottish Parliament Region: Mid Scotland and Fife

Case 200600918: Fife Council

Summary of Investigation

Category

Local government: Policy/Administration

Overview

The complainant Ms C raised a number of concerns about Fife Council (the Council)'s response to the presence of a group of travellers who had set up camp near her business. Ms C said that the Council's contractors had left the gate open which had allowed the travellers to gain access to the site. Ms C further complained about the way that the Council handled her complaint.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to act in accordance with their policies (*not upheld*);
- (b) the Council's contractors left the gate open which allowed the travellers to gain access to the site (*no finding*); and
- (c) the Council failed to handle Ms C's complaints in a reasonable manner (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. Ms C contacted Fife Council (the Council) about her concerns on 21 April 2006. She said that she considered that the Council were disregarding planning law in allowing the travellers to stay on the site. Ms C's letter was passed to the Head of Housing who replied on 19 May 2006.

2. Ms C first complained to the Ombudsman on 26 June 2006 but at that stage she had not made a formal complaint to the Council. She was advised that she would require to do so before the Ombudsman could look into the matter.

3. On 4 August 2006 Ms C exhausted the Council's complaints procedure and on 10 August 2006 she renewed her complaint to the Ombudsman.

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

- (a) the Council failed to act in accordance with their policies;
- (b) the Council's contractors left the gate open which allowed the travellers to gain access to the site; and
- (c) the Council failed to handle Ms C's complaints in a reasonable manner.

5. In order to investigate this complaint I have had access to the Council's complaint correspondence and I have corresponded with Ms C and the Council. I have identified the relevant policies which are listed in Annex 2 to this report. 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 Council were given an opportunity to comment on a draft of this report.

Investigation

(a) The Council failed to act in accordance with their policies

6. Ms C is a partner in a caravan business which in 1993 applied to use a piece of land close by the business to store caravans. Planning permission was refused on the grounds that it would be contrary to the Council's planning policies. Ms C said that the Council were allowing travellers to move on to Council owned land in the same location. Ms C considered that must also be contrary to the Council's policies.

7. In the Head of Housing's letter of 19 May 2006 he said that the site was being used as an informal stop over site by travellers and the Council were considering the possibility of officially designating the site as such subject to planning considerations and management arrangements. He said that conditions had recently deteriorated on the site but the Council were taking steps to bring about an improvement. He said that he was not unmindful of Ms C's concerns.

8. In response to Ms C's complaint the Chief Executive said that in line with Fife Council's Gypsy Travellers Co-operation Policy the Council sought to engage with travellers rather than immediately seek to evict them from unauthorised encampments. Scottish Executive Guidelines made it clear that local authorities and the police had to work with travellers and not seek eviction as a first step. The Council's efforts to negotiate a removal failed and the occupants of the site were given formal notice to quit on 26 May 2006. The travellers had left on 4 July 2006 under threat of legal enforcement. The Chief Executive said that the Council recognised the need for stopover sites for the increasing number of travellers entering the area but were having difficulty identifying sites which would be acceptable to both the local and travelling communities. The matter was being considered urgently by the Travelling Persons Working Group.

9. In her complaint to the Ombudsman Ms C said that the Chief Executive had not addressed her complaint that, in allowing the travellers to stay in the first place, the Council had not observed their own planning policies. Ms C outlined what she considered were the consequences of this decision for the Council Tax payers in terms of standards of hygiene and safety on the site, the expense of providing facilities and cleaning up and the necessity for legal proceedings.

10. The Scottish Executive issued Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland in December 2004. Paragraph 32 of the Guidelines states that 'Local authorities, the police and other partners should work pro-actively to manage encampments to minimise any disruption and facilitate access to services'.

11. Section 5.3 of Fife Council's Gypsy Travellers Co-operation Policy states that 'The decision whether to permit an unauthorised site to remain occupied will be a balance between the needs, rights and wishes of the travellers and

those of the settled community and whether there is any impact on the environment. Corroborative evidence on the level of the nuisance and/or impact will be required before action is taken'.

(a) Conclusion

12. I provided Ms C with a copy of the relevant Guidance and Policy. Ms C considered that travellers should be treated by the Council in exactly the same way as members of the local community with regards to using land but that is not what the Scottish Executive Guidance says. One of the aims of the Scottish Executive Guidance is stated to be to help strike an appropriate balance between the needs and legitimate expectations of members of the settled community, local businesses and landowners and gypsies/travellers. The Council have developed policies in accordance with the Scottish Executive Guidelines. The Council's policy clearly states that travellers will not be moved from unauthorised sites unless there is evidence of nuisance or environmental impact. It is clear that the Council monitored the site in accordance with their policy. It is also clear that when evidence emerged of nuisance/environmental impact the Council took steps to remove the travellers from the site. The evidence shows that the Council did act in accordance with their policy on travellers. I, therefore, do not uphold this complaint.

(b) The Council's contractors left the gate open which allowed the travellers to gain access to the site

13. In the Chief Executive's letter of 4 August 2006 he said that during Easter 2006 a group of travellers had broken into the site through a locked gate and had settled there.

14. Ms C said that she had seen a digger and a lorry working on the site on 3 and 4 April 2006. She provided the name of the contractor. At the Thornton Community Council meeting on 5 April 2006 the fact that the site was open was commented upon. The Secretary of the Community Council provided a letter to substantiate this.

15. When I made further enquiries of the Council the Chief Executive said that he had investigated the matter further and could confirm that the site had been broken into. He said that he was not certain whether the travellers or the contractor, who was not acting on behalf of the Council, had done it.

(b) Conclusion

16. It is unlikely that I would be able to find out how the travellers got onto the site. I note that the Council have taken steps since the departure of the travellers to secure the site to prevent a recurrence. I, therefore, do not think that anything more could be gained by investigating this further. I am able to make no finding in respect of this complaint.

(c) The Council failed to handle Ms C's complaints in a reasonable manner

17. Ms C originally complained to the Council on 27 June 2006 by email although she had been in touch with the Council previously about her concerns. Ms C's husband (also a partner in the business) had previously written to the Council on 21 April 2006 regarding the Council's plans to allow travellers to use the site as a stopover. Although he made it clear that the partners did not think that would be appropriate, he asked that the planners give reasons for their decision if that was what they decided to do.

18. The Council acknowledged Ms C's complaint by letter of 7 July 2006 and said that the Chief Executive would respond with 8 working days. On 13 July 2006 a member of the Council's staff contacted Ms C about securing the site. On 1 August 2006 the Head of Housing wrote to Ms C's husband and on 4 August 2006 the Chief Executive wrote to Ms C with an explanation of the Council's actions.

(c) Conclusion

19. I note that in Ms C's email to the Council of 27 June 2006 she refers to the 21 April letter as a complaint but I do not think that the Council acted unreasonably in dealing with that letter as an enquiry. It was not until Ms C's email of 27 June 2006 that the Council could reasonably be aware that she was making a complaint. The Council appear to have dealt with Ms C's complaint in a reasonable manner within the time they said they would. There is, therefore, no evidence that the Council dealt with Ms C's complaint unreasonably and I do not uphold this complaint.

18 July 2007

Explanation of abbreviations used

Ms C

The complainant

The Council

Fife Council

List of legislation and policies considered

Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland issued by The Scottish Executive in December 2004

Fife Council's Gypsy Travellers Co-operation Policy