

Scottish Parliament Region: Central Scotland

Case 200600243: North Lanarkshire Council

Summary of Investigation

Category

Local government: Land and Property; Disposal of property

Overview

The complaint was submitted to the Ombudsman by a Member of the Scottish Parliament (the MSP) on behalf of the complainant (Mr C) on 19 April 2006. Mr C raised concerns about North Lanarkshire Council's (the Council) disposal to a charitable trust (the Trust) by means of excambion (exchange) of land (the Yard) on which his lock-up garage is located.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to inform Mr C and his neighbours about the transfer of ownership (*upheld*); and
- (b) Mr C and other users of the Yard were not given the opportunity to purchase or to lease the Yard with access rights (*not upheld*).

Redress and recommendation

The Ombudsman recommended that the Council apologise to Mr C and his neighbours for not informing them directly of the change in ownership.

The Council confirmed that they accepted that recommendation.

Main Investigation Report

Introduction

1. The complainant (Mr C) is a retired policeman. He and two of his neighbours erected lock-up garages in a yard (the Yard) behind what was formerly a police post (Police Post A). The sub-office and another police post (Police Post B) became surplus to operational requirements. In 2002 Police Post B was sold by North Lanarkshire Council (the Council) to a charitable trust (the Trust) engaged in preserving former civil defence buildings. Subsequently, the Council, in promoting proposals for environmental improvements in the area of Police Post B, considered that it would be advantageous to re-acquire it and negotiated an exchange of properties involving Police Post A with the Trust in 2003.

2. The complaints from Mr C which I have investigated are that:

- (a) the Council failed to inform Mr C and his neighbours about the transfer of ownership; and
- (b) Mr C and other users of the Yard were not given the opportunity to purchase or to lease the yard with access rights.

Investigation

3. The investigation is based on information supplied by Mr C, his neighbours and the Member of the Scottish Parliament who first referred the complaint (the MSP), and the Council's response to my enquiries. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C, the MSP, and the Council were given an opportunity to comment on a draft of this report.

4. According to Mr C's neighbour at 2 X Road (Mr B), an area of land to the east and behind the Yard associated with Police Post A was given to the then police authority by Coatbridge Burgh Council in the 1950s to enable the occupants of nearby police houses at 2-10 X Road to erect lock-up garages. The Yard and the site of the lock-up garages are accessed via a lane between 4 and 6 X Road. Mr B built a garage in his rear garden. On his retirement from the police force he successfully applied to purchase his home with a date of entry of 1 February 1993. He stated that as part of the transaction he established rights of pedestrian and vehicular access via the lane and the Yard.

5. Mr C is a retired police officer who has resided since 1974 in a mid terraced house at 8 X Road. He and two of his neighbours erected wooden lock-up garages on ground adjacent to the east end of the Yard. There were no formal leases for the ground in question and no rent was paid by Mr C or his neighbours.

6. In late 1993, Mr C made an application to buy his home. An offer to sell was issued on 16 November 1993 on behalf of the police authority. A letter from the Director of Legal Services of the former Strathclyde Regional Council of 16 February 1994 stated that the police authority were anxious to complete the conveyance of Mr C's house before 31 March 1994. The Director of Legal Services stated that the Police authority would be contacted to ascertain whether they wished to sell the plot of ground on which the lock-up garage is situated, but no discount would be applicable in respect of a separate sale of the lock-up garage site. No subsequent sale was negotiated.

7. Police Post A lay unused after Strathclyde Police declared it to be surplus to operational requirements in January 1993. Following the reorganisation of local government in Scotland on 1 April 1996, ownership of Police Post A, the adjoining access lane, and the Yard transferred to the Council.

(a) The Council failed to inform Mr C and his neighbours about the transfer of ownership

8. On 26 September 2000, the Council's Housing and Property Services (Property) Sub-Committee agreed to dispose a police sub-station at B (Police Post B) to the Trust. It was subsequently sold to the Trust for £1 in 2002. Although the Trust wrote to the Council in 2001 stating their desire to acquire Police Post A in X Road, no immediate action was taken on that approach.

9. On 8 July 2003, the Director of Housing and Property Services (the Director) prepared a report indicating that a housing refurbishment scheme in the area in which Police Post B was situated would benefit from its demolition. He reported that the Trust had been approached and had agreed to re-convey Police Post B to the Council in exchange for alternative premises. The Council's Policy and Resources (Property) Sub-Committee on 17 July 2003 authorised the Head of Property Services to enter into an agreement with the Trust to exchange Police Post A for Police Post B.

10. It was anticipated in July 2003 that only Police Post A which adjoins 6 X Road and a front garden area would be involved in the exchange but not the Yard and lock-up garages site to the rear. Subsequent correspondence with the Trust's solicitors indicated that the Trust also wanted the Yard. The exchange was concluded on the larger area including the access lane and the Yard.

11. None of the four residents were informed of this decision. Mr C stated that he was first alerted to a change in ownership when, on 9 April 2004, he was stopped by a representative from the Trust when he entered the Yard to access his lock-up garage. He was informed that the Trust now owned Police Post A and the lane and the Yard. Mr C was advised that Police Post A would be renovated and roller shutters installed on doors and windows, security lighting and an alarm system fitted, and a gate erected across the lane.

12. A notice was placed on Mr C's lock-up garage door at this time requesting him to make contact with an officer (Officer 1) of the Council. On contacting Officer 1 and also his local councillor, neither was aware that the Yard had been sold.

(a) Conclusion

13. The Council had no legal obligation to consult with Mr C and his neighbours when they exchanged Police Post A for Police Post B. However, they were, or should have been, aware that they were not exchanging the entire subjects at X Road with vacant possession and that Mr C and other nearby residents would be affected. In view of this the Council should have informed Mr C and the others affected. I also see no evidence that the Council fully explored the situation obtaining at the property before conveying by exchange the entire subjects of Police Post A, the lane, the Yard and the site of the lock-up garages. They should in my view have done so. By not addressing the problem occupation of part of the site by Mr C and his neighbours presented, the Council were in effect transferring an administrative problem. I uphold this complaint.

(a) Recommendation

14. The Council missed the opportunity to rectify what was clearly an unsatisfactory administrative situation and the proposed exchange of properties in 2003 should have galvanised them into regularising the position. That opportunity has now been lost and, since the Council no longer have an

ownership interest in the subjects, the matter is not resolvable by them. The Ombudsman recommends that the Council apologise to Mr C and his neighbours for not informing them directly of the change in ownership.

(b) Mr C and other users of the Yard were not given the opportunity to purchase or to lease the Yard with access rights

15. On 24 December 2004, Mr C received a letter from the Trust offering to lease to him that part of the Yard on which his lock-up garage stood. The lease would be on an annual basis with the option for either party to terminate the lease at one month's notice.

16. On 28 January 2005 Mr C wrote to the Group Manager, Surveying Services Group (Officer 2) at the Council seeking answers as to whether the disposal to the Trust had been advertised, whether neighbours should have been given the opportunity to purchase, whether planning permission had been sought and the intended use. Mr C understood that the Yard went with the houses and not with Police Post A and requested clarification.

17. The Director informed Mr C by letter of 14 February 2005 that his legal rights to the lock-up garage site and to take access over the access lane were not altered by the change of ownership... 'those rights, whatever they might be, will have been obtained through prescription, i.e. usage of the land, as you have no formal right of access or permission to site your garage'. The Director understood from the former Regional Council's files that Mr C was aware of this when he purchased his property in 1994. The Director indicated that the Trust were happy to allow Mr C to retain his lock-up garage at a nominal rent and to take access from the lane. The Director explained the reasons for the disposal of Police Post A to the Trust. He confirmed that they intended to use it for storing emergency fire fighting equipment and that, if they needed planning consent for alterations, then Mr C would be consulted as part of the planning process. The Director indicated that if the Trust did not need the lock-up garage site then they might be prepared to sell. The Director undertook to contact the Trust and said he would raise this together with the issues of rent and retaining access.

18. Mr C responded on 20 May 2005 stating that in 1994 his solicitor had tried to establish a right of access and to purchase that part of the Yard on which the lock-up garage was sited. Mr C had been advised to proceed with the purchase of the house and was assured he would be informed later regarding the site of

the lock-up garage but this had been lost with the passage of time. Mr C also indicated that a representative of the Trust had insisted on vehicles being removed from the Yard and had on his visits caused obstruction by placing his vehicle across the access lane or in the middle of the Yard. Mr C requested that he and his neighbours meet with a Council official at the Yard. A meeting took place in the summer of 2005 at the Council's offices in Cumbernauld.

19. On 9 September 2005, the Council's Acting Section Manager (Development and Disposals) (Officer 3), wrote to the Trust. Officer 3 confirmed that Council records provided no indication of any formal lease agreements or receipt of rent for use of the garage sites in the Yard prior to the Yard's transfer to the Trust. Officer 3 sought confirmation of what the Trust proposed by way of formalisation and what the proposed rental charge would be for the garage sites. In a further letter of 27 September 2005, he also asked whether the Trust would be prepared to dispose of the Yard.

20. In a letter of 7 December 2005, the Council's Group Manager (Valuation Services) (Officer 4) informed Mr C that the Trust had confirmed to him that they did not wish to dispose of their interest in the Yard to Mr C or his neighbours by means of an outright sale. Officer 4 noted that the Trust had already provided a suitable offer of lease to him which, although not his preferred outcome, at least allowed Mr C to continue to use his lock-up garage. Officer 4 indicated that, since the property was no longer owned and controlled by the Council they were unable to assist Mr C further with the matter.

21. Mr C then approached the MSP. The MSP wrote to the Ombudsman's office on 19 April 2006 inviting us to investigate. Upon consulting the Council, they confirmed that the complaint had not been taken fully through their complaints procedures and Mr C pursued his complaint further with the Council, receiving a reply dated 21 September 2006 from Officer 4. Officer 4 referred to the meeting in 2005 (paragraph 18) which had disclosed why the exchange of properties had taken place. Officer 4 confirmed that the Council were not obliged to sell or make available property to adjoining occupiers. He stated that the Yard was not given away by the Council and the ground on which the lock-up garages were sited was 'not for the benefit of owner occupiers'. In relation to the ongoing use of the property by the Trust, the Council had no control over future uses to which the property is put other than through the Planning Acts.

22. Mr C was not happy with this explanation and appealed to the Director on 2 October 2006. In his reply of 6 November 2006, the Director confirmed that the Council's procedures were followed and that there was no requirement on the Council or any other owner to advise owner occupiers of the Council's intention to sell part of their property. In relation to the site of the lock-up garages which were transferred to the Trust as part of the exchange, these had historically been occupied by former police members, but there was no lease in place and no undertaking from either the police or the Council to provide a lease. At the time they negotiated with the Trust the Council were satisfied with the terms of the exchange as providing best value to the Council.

23. Mr C informed me that he considered the former Strathclyde Regional Council had previously promised to sell the site of his garage to him. He also maintained that in the documents and correspondence relating to Police Post A being surplus to requirements, the Yard had not also been mentioned.

(b) Conclusion

24. Mr C felt that at the stage the Trust informed the Council that they were interested in the entire premises rather than just Police Post A, the Council should have informed Mr C and others about this. I have dealt with this aspect of the complaint at paragraph 13. Mr C also complained that as a result of the decision to include in the exchange the lane and the Yard he and his fellow users were not given the opportunity to purchase or lease the Yard or at least the sites on which their lock-up garages stood. Again there was no legal obligation to consult and since the subjects were not being exposed to the market the Council did not have to obtain the best price. The value of the subjects at Police Post A was effectively the value the Council placed on completing the environmental improvements in the vicinity of Police Post B. Had Mr C and others sought to regularise their own position earlier, and had they entered formal leases with the Council, then they would at least have been served with a notice to quit. I have no knowledge of whether the lease terms subsequently offered by the Trust were the same (or better or worse) than those which might have been offered by the Council. While I am aware that one resident sought to buy Police Post A, I have seen no evidence of any prior bid or interest expressed to the Council by Mr C and others to acquire the Yard or at least the sites on which their lock-up garages stood. On balance, given that they had not announced themselves as prospective buyers to the Council, I do not uphold this complaint.

25. The Council confirmed that they accepted that recommendation.

22 August 2007

Explanation of abbreviations used

The MSP	The Member of the Scottish Parliament who first referred the complaint
Mr C	The complainant
The Council	North Lanarkshire Council
The Trust	A charitable trust with an interest in preserving former civil defence properties
The Yard	The area to the rear and side of Police Post A connected to X Road by an access lane
Police Post A	The redundant police post at X Road
Police Post B	The other redundant police post
Mr B	Mr C's neighbour at 2 X road
The Director	The Director of Housing and Property Services
Officer 1	A Council property officer
Officer 2	The Council's Group Manager Surveying Services Group
Officer 3	The Council's Acting Section Manager (Development and Disposals)

Officer 4

The Council's Group Manager
(Valuation Services)