

Scottish Parliament Region: West of Scotland

Case 200500865: Renfrewshire Council

Summary of Investigation

Category

Local government: Land and Property; Planning

Overview

The complainant (Mr C) raised a number of concerns regarding Renfrewshire Council (the Council)'s decision to advertise a piece of land (the Land) for sale and to declare it surplus to the Council's requirements.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council acted in an unethical, unprofessional and underhand manner by placing a newspaper advertisement offering the Land for sale without any consultation or notification of interested parties (*not upheld*);
- (b) the Council placed undue pressure on members of the Council's Planning and Development Board (the Board) by stating that income from the sale of the Land would be used to augment the Council's future budget (*not upheld*);
- (c) the Land should not have been offered for sale without the Board's approval (*not upheld*); and
- (d) the Land is officially designated as woodland and has been adopted as an area of leisure and recreation by virtue of 35 years historic usage (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 1 August 2005, the Ombudsman received a complaint from a man, referred to in this report as Mr C, regarding Renfrewshire Council (the Council)'s decision to advertise a piece of land (the Land) for sale and to declare it surplus to the Council's requirements. The Land in question was an informal open space, approximately 1.4 hectares in size, situated close to Mr C's home.

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

- (a) the Council acted in an unethical, unprofessional and underhand manner by placing a newspaper advertisement offering the Land for sale without any consultation or notification of interested parties;
- (b) the Council placed undue pressure on members of the Council's Planning and Development Board (the Board) by stating that income from the sale of the Land would be used to augment the Council's future budget;
- (c) the Land should not have been offered for sale without the Board's approval; and
- (d) the Land is officially designated as woodland and has been adopted as an area of leisure and recreation by virtue of 35 years historic usage.

Investigation

3. The investigation of this complaint involved making three written enquiries of the Council. In addition to obtaining and reading the correspondence between Mr C and the Council, I had sight of: reports put to the Board on 24 May 2005 and 21 September 2005; minutes of the Board's meeting on 24 May 2005 and 21 September 2005; the marketing particulars for the Land (including the Council's development brief); the Houston New Community Master Plan 1968 (the 1968 Plan); the Renfrew District Local Plan (the Renfrew Plan); and the Renfrewshire Local Plan (the Local Plan).

4. 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 acted in an unethical, unprofessional and underhand manner by placing a newspaper advertisement offering the Land for sale without any consultation or notification of interested parties

5. On 20 April 2005, the Council advertised the Land for sale setting a closing date of 9 June 2005 for final submission of offers. On 24 May 2005, a report was put to the Board recommending that the Land be declared surplus to requirements. Board members voted by a majority of eight to six to agree that the Land was surplus to requirements. Mr C believed that interested parties should have been consulted prior to the decision to sell the land being taken.

6. The Council told me there was no statutory requirement for the Council, as landowner, to undertake any consultation prior to advertising a site for sale. They said that their Head of Property Services would not routinely undertake consultation regarding disposal of land.

7. They said, however, that it was the Council's practice, depending on the nature of the site, to consult with appropriate agencies and organisations. They said that, in this case, consultation was undertaken prior to the Land being advertised for sale with local Education, Roads and Water authorities and comments were received on the likely impact of development on the Land on local schools, the road network and the sewerage network. The Council said that, in addition, the local Community Council was made aware of the potential disposal of the Land.

(a) Conclusion

8. I note that there was no statutory obligation placed on the Council to undertake consultation prior to advertising land for sale.

9. I note, nonetheless, that some limited consultation did occur. In any event, because the Council had no duty to undertake consultation it cannot be said that they acted in an unethical, unprofessional or underhand manner in deciding to sell the Land. I do not find any evidence of maladministration in this regard and, consequently, I do not uphold the complaint.

(b) The Council placed undue pressure on members of the Board by stating that income from the sale of the Land would be used to augment the Council's future budget

10. The report put to the Board on 24 May 2005 states, under the heading 'financial implications' that 'disposal [of the Land] contributes to the Council's

programme for Capital Receipts'. Mr C believed that telling Elected Members on the Board that the proceeds from the sale of the Land would go towards the Council's future budget was not appropriate.

11. The Council told me that it was within the remit of the Board to declare land held on its portfolio surplus to requirements where there was no operational need for the land. The Council said they were of the opinion that it was appropriate to intimate to members of the Board that, in the event the Land was declared surplus to requirements, it would be sold and the proceeds used to augment financial resources allocated to fund future projects contained within the Council's approved capital plan.

(b) Conclusion

12. I have seen no evidence that undue pressure was placed on members of the Board. I consider that it was appropriate for the report put to the Board to state what the proceeds of any sale of the Land would go towards. In any case, it would have been evident to members of the Board that proceeds of any sale would be reinvested in other Council projects or services.

13. I note that the Board's members, as democratically elected representatives of the community they serve, chose by a majority of two to agree that the Land was surplus to requirements. I understand that Mr C may not like the decision, but there is no evidence of maladministration in the way it was reached. Consequently, I do not uphold this complaint.

(c) The Land should not have been offered for sale without the Board's approval

14. Mr C pointed out that the Land was advertised for sale prior to the Board being asked to declare it surplus to requirements. Mr C believed that the Board should have been asked before the Land was advertised.

15. The Council said the decision to advertise the Land for sale prior to the Board having declared it surplus to requirements was not unreasonable. They said that, during a Best Value audit, they had identified the Land as not being required for operational purposes. They said that the advertising arrangements for the sale of the Land were designed to achieve the best prices possible in accordance with the Local Government (Scotland) Act 1973, to comply with the Council's obligations to obtain and provide Best Value and to obtain a significant

capital receipt in accordance with the timescale targets required in the Council's approved capital plan for 2005 and 2006.

16. The Council said they proceeded with the advertisement as part of their forward planning process for marketing and disposal of the Land. They said that the Land had previously been designated for potential road building. They said, however, that since 1996 the Council had no plans to use the Land for road improvement purposes. The Council said the closing date for receipt of offers was 9 June 2005 and that, had the Board decided not to declare the Land surplus to requirements when it met on 24 May 2005, then the Land would not have been sold.

17. The Council said that, had they delayed the advertising of the Land by a month, they would have lost interest they stood to gain from the investment of the capital receipt and this had an impact on the Council's decision to advertise the Land for sale prior to it being declared surplus by the Board.

18. Initially, I had some concerns regarding this complaint. Particularly, I was concerned that deciding to advertise land for sale before it was declared surplus to requirements might lead to injustice for those who responded to the advertisement and devoted resources to submitting an offer if the Board subsequently decided, after the advertisement had appeared, that the Land should not be declared surplus to requirements. I raised this concern with the Council.

19. The Council responded by stating that, although it was not their normal practice to advertise land for sale prior to the Board declaring it surplus to requirements, the key issue in advertising the sale was one of timing and the fact that the Council wanted to avoid losing interest on the investment of the capital receipt by advertising the Land for sale prior to the matter being put to the Board.

20. The Council said they did not consider there was a significant risk that the Board would not agree to declare the Land surplus to requirements as the Council did not routinely retain ownership of land that was not required for operational purposes. The risk of injustice to respondents to the advertisement was, therefore, also considered not to be significant. The Council emphasised that the decision was taken to advertise the site so as not to delay the prospect

of obtaining a significant capital receipt. The Council said they did not believe Mr C's interest had been compromised as a result of this.

21. The Council said that if the Board had decided not to declare the Land surplus to requirements, they would have withdrawn the Land from sale. They said that at the closing date, the only costs that potential buyers would incur were costs relating to producing a layout plan and some legal costs. However, the Council said that, as only one offer would be successful, unsuccessful buyers would have to write costs off. The Council said that, in any case, they did not guarantee to accept any offer and they were entitled to turn down all offers if it was decided, for whatever reason, that they should not be accepted.

(c) Conclusion

22. While advertising the Land for sale prior to the Board being asked to declare it surplus to requirements was unusual in terms of the Council's normal practice, I am satisfied that the reasons given by the Council in support of their actions are reasonable. The Council are under no obligation to declare land surplus to requirements prior to advertising it for sale and, I do not consider it unreasonable, where there are circumstances that justify departure from the Council's normal practice, for that to happen.

23. Although I had some concerns about the potential injustice that might have been suffered by potential buyers, that injustice is hypothetical since the Board did agree to declare the Land surplus to requirements. In addition, while I wanted to probe this point as part of my investigation, my concern here is with Mr C and his claim of injustice.

24. In that regard, I agree with the Council that Mr C's interests were not compromised by the fact that the Land was advertised for sale prior to the Board declaring it surplus to requirements.

25. I, therefore, conclude that the Council did not act unreasonably by advertising the Land for sale prior to the Board declaring it surplus to requirements. Consequently, I do not uphold this complaint.

(d) The Land is officially designated as woodland and has been adopted as an area of leisure and recreation by virtue of 35 years historic usage

Policy Background

26. The Renfrew Plan was the statutory development plan at the time the Council decided to advertise the Land for sale. However, this was a period of transition to the new Local Plan. Therefore, in this case, although technically the Renfrew Plan was the development plan, the Council would need to have regard to the new Local Plan, because it would be against the requirements of that plan that any planning application would be considered and determined.

27. The following two Local Plan Policies applied to the Land:

POLICY H1: General Residential Policy

(a) The Council will safeguard and give prime consideration to the protection of the amenity of the residential areas in the assessment of development proposals in the Residential Policy Areas shown on the Proposals Map. Housing will be the preferred use for new development proposals.

(b) The Council will seek to maintain and, where possible, enhance the character of all of the existing residential areas, by resisting any developments which will be detrimental to the amenity of these areas.

(c) Non-residential proposals will only be permitted where the proposal will not have an unacceptable adverse effect on the amenity of the area in respect of visual quality, noise, smell, traffic, hours of operation, vibration, dust, overlooking and meets statutory air quality objectives.

POLICY L4: Protection of Lesser Open Spaces and Recreational Facilities

The Council will assess proposals for development of open spaces and recreational facilities not identified on the Proposals Map in terms of:

(a) the amenity value of the site to the surrounding area;

(b) the value of the site or facility in recreational terms to the surrounding population.

28. The following policies are either non-site specific or did not apply to the Land, but are set out here as they were referred to by Mr C or the Council in the course of this investigation.

POLICY H2: Housing Land Supply

The Council will maintain a supply of effective housing land over at least a five-year period in accordance with the requirements of the Glasgow and

the Clyde Valley Joint Structure Plan, giving preference to the development of urban brownfield sites before greenfield sites or sites within the Green Belt. The Housing Land Supply will be monitored annually and adjusted as appropriate with some sites being added and others removed.

POLICY H3: Housing Opportunity Sites

The Council will support and encourage residential development on the Opportunity Sites included in Table H3, and shown on the Proposals Map.

POLICY L1: Protection of Active Recreational Open Space Facilities

The Council seeks to protect the areas of active recreational open space shown on the Proposals Map. The Council will require development proposals not of an active recreational nature to meet one or more of the following criteria:

- (a) there is a long term excess in the provision of pitches, playing fields and public open space in the wider area, taking into account long term strategy for provision, estimated demand and overall recreational and amenity value; or
- (b) alternative provision of equal or greater community benefit and accessibility would be made available on another site; or
- (c) the proposal incorporates the retention or enhancement of the existing facilities on part of the site, while enabling redevelopment of the surplus section of the site for another purpose.

In addition there will require to be no unacceptable adverse impact on the amenity of nearby residents.

POLICY L3: Protection of Formal and Informal Open Space

The Council seeks to protect the areas of formal and informal open space shown on the Proposals Map. Development proposals for any use not of an open space or recreational nature, or ancillary to these uses, will require to meet the following criteria:

- (a) the benefit of the proposed development to the public clearly outweighs the present open space value of the site;
- (b) the amenity of the surrounding area will not be adversely affected by the loss of open space and by the nature of the proposed development.

Mr C's complaint

29. In his letter to the Council dated 27 May 2005, Mr C stated that the Land was an essential local amenity and had been used as an area of leisure and recreation for over 35 years. Mr C stated that he used the Land daily and was never alone in doing so. He said the area was designated as 'woodland' in the 1968 Plan and was, therefore, not appropriate for residential development. He said the designation as woodland was reinforced when, in the mid-1970s, the Council planted a copse of Scots Pines and Silver Birches on the Land.

30. Mr C said he disagreed with comments made to him by Council officers that the Land was 'zoned for housing' by virtue of the fact that it was not coloured in on the Local Plan map. Mr C said the areas designated for housing should be designated 'Policy H1', 'Policy H2' and so on, but he believed the Land was not designated as such.

31. In his letter to the Council dated 31 July 2005, Mr C maintained that the Land was not covered by Policy H1. He repeated that it was not designated as such in the Local Plan. In addition, he said that the 1968 Plan designated the Land as woodland and even depicted it pictorially as such.

32. In a letter to the Ombudsman dated 6 June 2007, Mr C changed his position. He accepted that the Land was covered by Policy H1. He argued, however, that three schools, a cemetery and a church were also covered by Policy H1. He stated that Policy H1 did not provide automatic consent for development. He said that, had the intention been for there to be residential development on the Land, the Local Plan could have designated the Land under Policy H3 (see paragraph 28 above). Mr C argued that the fact that the Land was not specifically marked for residential development in the Local Plan meant that the proposal to develop the Land for residential purposes was a departure from the Local Plan.

33. Mr C also commented on Policy L4. He stated that, according to Policy L4, the amenity value of the Land and its value in recreational terms to the surrounding population would have to be taken into consideration. Mr C argued that the Land was clearly valued by local residents.

The Council's response

34. In their letter to Mr C dated 24 June 2005, the Council said the Land was covered by Local Plan Policies H1 and L4. They said these policies potentially allowed development.

35. They explained that Policy H1 was designed to safeguard existing residential areas and that the preferred use of land for new developments would be housing. The Council said the Land had not been identified in the Housing Land Supply (see paragraph 28 above), but pointed out that the Housing Land Supply was not intended or required to identify all potential housing sites.

36. The Council explained that Policy L4 provided a safeguard for open spaces and recreational facilities which were not specifically identified in the Local Plan and established criteria which had to be considered when development proposals for an area were put forward. It did not, however, prohibit development.

37. In a subsequent letter to Mr C dated 11 July 2005, the Council maintained their position and added that the Land had no designation as woodland.

38. In a letter to me dated 5 May 2006, the Council said that the Land was primarily an open grassed area. They stated that the planning policies adopted in the Local Plan, and where those policies should apply, were open to challenge when the draft version of the Local Plan was out for consultation. The Council confirmed that no challenges had been received to the policies applicable to the Land.

39. The Council said that the Land had no designation as woodland. They said that survey work carried out when the Local Plan was being prepared, did not identify the Land as an area of active recreation or a formal 'park' area. The Council said there were no challenges to the designation of the Land when the draft Local Plan was consulted on or when a Local Public Inquiry was held. The Council said that policies which specifically protected areas of open space, Policy L1 and L3, did not apply to the Land.

40. The Council, therefore, considered that planning policies applicable to the Land permitted residential development on the Land. The Council said that the Development Brief they had prepared to assist prospective purchasers to formulate proposals had outlined the planning policies covering the site and

indicated the principles under which planning permission for residential development might be obtainable.

41. The Council emphasised that the missives of sale for the Land would be concluded conditional on planning permission being obtained. This meant that any interested party, such as Mr C, would have the opportunity to lodge planning objections when an application was received. Those objections would then be considered by the Council, as planning authority, before a decision was taken on whether or not to grant planning permission.

42. The Council also stated that, in the event that the Council intended granting planning permission, the application would probably require to be referred to Scottish Ministers as the Council, as owner of the Land, had a financial interest in the outcome of the planning application. The Council pointed out that referral to Scottish Ministers would be required either if a proposed development was contrary to the development plan for the area or if it was subject to a substantial body of objections. In this case, the Council said it anticipated a substantial body of objections which would require referral to Scottish Ministers. This safeguard meant that, if Scottish Ministers felt there was any need to, they could call the application in and determine it themselves.

43. The Council, responding to my specific enquiry, clarified that they had no statutory duty to consider the Local Plan prior to advertising land for sale. They said they only had a statutory duty to consider the Local Plan when considering and determining a planning application. The Council also confirmed that the 1968 Plan had been superseded first by the Renfrew Plan and then by the Local Plan, so that it was of historical interest only. In commenting on a draft of this report, the Council said that, for the avoidance of doubt, the 1968 Plan designated the Land for housing and main road purposes.

(d) Conclusion

44. Mr C refers to the 1968 Plan to support his view that the Land is designated as woodland. However, that plan has no status in planning terms and has been superseded first by the Renfrew Plan and the current Local Plan. I do not, therefore, agree with Mr C that the Land was designated as woodland.

45. Mr C states that the Land has been used as an area of leisure and recreation for over 30 years and I have no reason to doubt this. Historic usage does not, however, offer the Land any protection from development in planning

terms. Specific protection of the Land might have been achieved by applying Policy L1 or L3 to it; however, this was not done. I note that it was open to Mr C and any other interested parties to make representations to the Council regarding the policies applicable to the Land when the Local Plan was out for consultation. Had Mr C wished to argue for formal recognition of the Land as a park or area of active recreation, it was open to him to do so in response to the Local Plan consultation.

46. I agree with the Council that the Land is covered by Policy H1 and L4. I consider that both policies potentially allow development. Certainly, the policies do not prohibit development or contain any terms that would make it inappropriate for the Land to have been sold for residential development.

47. I note that the statutory duty to consult the Local Plan only comes into play when a planning application is being considered and determined, not when a decision is taken to advertise land for sale. Nonetheless, it is clear that the Council did consider the Local Plan prior to advertising the Land for sale. This is shown by the fact that the development brief clearly referred to the relevant policies of the Local Plan and explained what was likely to be required for planning permission to be granted.

48. Mr C is aggrieved that the Land was put up for sale. However, the Council have made clear that the missives of sale for the Land would only be concluded if planning permission was successfully obtained. This means that Mr C's interests, and those of any others who have concerns about development on the Land, are protected in that they could lodge formal objections and put a case for why development is not appropriate to the Committee of Elected Members who would consider the planning application. Prior to the sale being concluded and prior to development being agreed, Mr C will, therefore, have had a full opportunity to express his objections to residential development on the site and his objections will have to be formally considered as part of the statutory planning process.

49. I am satisfied that there is no evidence of maladministration in relation to this point of complaint. I also note that Mr C will have a full opportunity to air his concerns and have them formally considered by the Council when a planning application for development of the site is being considered. Consequently, I do not uphold the complaint.

Explanation of abbreviations used

Mr C	The complainant
The Council	Renfrewshire Council
The Land	A piece of land which the Council decide to declare surplus to requirements and to advertise for sale for residential development
The Board	The Council's Planning and Economic Development Board
The 1968 Plan	The Houston New Community Master Plan
The Renfrew Plan	The Renfrew District Council Local Plan
The Local Plan	The Renfrewshire Council Local Plan