

Scottish Parliament Region: South of Scotland

Case 200602421: Scottish Borders Council

Summary of Investigation

Category

Local government: Roads and Transport, road alterations

Overview

Scottish Borders Council (the Council) built a new footpath adjacent to the complainant (Mrs C)'s property. Mrs C complained that the position of this footpath had adversely affected her privacy by directing pedestrians onto the land in front of her house.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council built a footpath adjacent to Mrs C's property which directed pedestrians onto her land (*upheld*); and
- (b) the Council's response to Mrs C's complaint about this was inadequate (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council

- (i) apologise to Mrs C and her husband for not consulting with them about the impact of the new footpath on their privacy; and
- (ii) ensure that there is appropriate consultation with residents likely to be affected by 'Safer Routes to School' projects.

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

Main Investigation Report

Introduction

1. In February 2004, as part of a new housing development on the edge of the village where the complainant (Mrs C) lives, Scottish Borders Council (the Council) upgraded a footpath which connected the development to the rest of the village and provided a pedestrian route to the village's primary school. Mrs C had some concerns at the time and corresponded with the Council and the Community Council about the way this work had been undertaken and its effects on her property. The footpath encroached onto her land without her consent. By February 2006, Mrs C's concerns about the pedestrian traffic at the front of her property had grown to the extent that she contacted the Council again to seek a remedy.

2. Following a period of negotiation, and after Mrs C had made a formal complaint about the way this matter had been handled, the Council agreed to construct a footpath around the edge of Mrs C's property.

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

- (a) the Council built a footpath adjacent to Mrs C's property which directed pedestrians onto her land; and
- (b) the Council's response to Mrs C's complaint about this was inadequate.

Investigation

4. In order to investigate this complaint, I made inquiry of the Council on 11 October 2007 and received their detailed response on 9 November 2007. I have reviewed correspondence between the Council and Mrs C, correspondence between the Community Council and all parties, and plans and photographs showing the work undertaken and scheduled.

5. 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 Council built a footpath adjacent to Mrs C's property which directed pedestrians onto her land

6. Following the building of a development of eight houses on the edge of the village, the Council constructed a footpath which connected the development with the rest of the village. The development was opposite the village's primary

school and the footpath was intended to offer a safer pedestrian route to the school. The construction of the path took place in February and March 2004.

7. The path connected with the main street of the village at the edge of Mrs C's property. Her house is the most westerly of a row of houses on the south side of the main street, each of which has an area of private land between the house front and the road edge. This area is gravelled and there is no pavement on the south side of the street. There is no barrier between this area of land and the road edge and many residents, including Mrs C, park their cars on their land in front of their properties.

8. At the time of the footpath's construction, the Council had some correspondence with the Community Council over concerns about the way this construction was carried out. Residents also asked the Council if they had any intention to continue the path along the village's main street. Mrs C and her husband (Mr C) were involved in this correspondence and expressed concern that the footpath would exacerbate problems of anti-social behaviour by young people at the front of their home. They felt that, although there was an existing path that came up to the edge of their property, this path was little used and the new, wider path would join up this small section with another path, leading to increased pedestrian traffic.

9. On 14 April 2004, after the footpath was completed, Mr and Mrs C wrote to their councillor to voice these concerns and to complain that the completed path encroached onto their land by 'over a dozen centimetres'¹. They also expressed their view that it would have been preferable for the Council to have explored the use of the north side of the main street as the pedestrian route to the school from the village as there was already a paved area there. The councillor replied to Mr and Mrs C on 21 April 2004 stating that he would convey these concerns to senior managers in the Council. He also referred to a 'railing' at the edge of their property which had been suggested by a Council officer as a way of deterring pedestrians from coming onto their land. There is no record of further action in relation to these issues at the time.

¹ The Council have accepted this encroachment and have apologised for it on a number of occasions, noting that it does not affect the ownership of the land or Mr and Mrs C's boundaries. They also offered to purchase this land from Mr and Mrs C. This issue was not part of the investigation.

10. On 4 March 2006, Mrs C wrote to her councillor to follow-up on this previous correspondence. She had not been able to follow this up earlier due to ill health. In this letter, Mrs C referred to the suggested barrier and reported that there was a considerable amount of pedestrian traffic on her ground at the front of her house. She again raised the issue of her preference for a school pedestrian route that used the opposite side of the street.

11. The councillor responded by letter on 11 March 2006 and expressed his concern that there had been no response to the issues raised. He noted his understanding that Mrs C had not suffered any actual loss of property. He also said that he understood there was a problem in placing a barrier at the edge of her property as it would have the effect of 'directing or deflecting' children and pedestrians onto the road. He said that he had forwarded Mrs C's concerns to the Council officer responsible for the 'Safer Routes to School' initiative.

12. On 2 May 2006, Mr and Mrs C met with a senior officer from the Council's Technical Services department (Officer 1) and afterwards entered into correspondence with the Council about the issues. Officer 1 wrote to Mr and Mrs C on 25 May 2006 acknowledging that there was an increase in pedestrian traffic on the new footpath and that these pedestrians crossed the gravelled area in front of their house. He also said that colleagues had expressed concern about his initial suggestion of a barrier at the edge of their property because it would force pedestrians onto the road.

13. Further correspondence took place between Mrs C and the Council, much of it relating to proposed solutions to the concerns raised by Mrs C about the pedestrian use of her land. This will be addressed below. The question of whether the new footpath had the effect of directing pedestrians onto Mrs C's land was addressed specifically by the Council in a letter from the Director of the Council's Technical Services department (Officer 2) on 28 March 2007. In this letter he acknowledged that, although the Council had 'no liability in law to prevent members of the public straying onto private property', they had an 'obligation' to assist Mrs C in this issue as they were 'delivering' walkers to a point from which they will be tempted to continue onto your land' because of the way the footpath had been constructed.

(a) Conclusion

14. It is clear that Mr and Mrs C experienced an increase in pedestrian traffic on their land in front of their house after the new footpath was completed. This

footpath replaced an existing one and connected with the new housing development. In addition, the path offered a safer option for a pedestrian route to the village's primary school. It is, therefore, unsurprising that the pedestrian use of this route increased.

15. The Council have acknowledged that the way the footpath was constructed – it connects directly with Mrs C's land – had resulted in this increased number of pedestrians continuing their line of travel over Mrs C's land. Mrs C reported a rise in incidents of anti-social behaviour from children passing her house and has experienced damage to her car. She also found that her privacy was considerably compromised by the number of people walking close to her windows.

16. The Council have admitted to a degree of responsibility for the impact of the footpath on Mr and Mrs C's property. There is no evidence that they consulted with Mr and Mrs C before work began, and it is possible that such consultation could have allowed the issues to be addressed before problems increased. For these reasons, I uphold this complaint.

(a) Recommendation

17. The Council have offered full apologies for the encroachment onto Mr and Mrs C's land. The Ombudsman recommends that the Council:

- (i) further apologise to Mr and Mrs C for not consulting with them about the impact of the new footpath on their privacy; and
- (ii) ensure that there is appropriate consultation with residents likely to be affected by 'Safer Routes to School' projects.

(b) The Council's response to Mrs C's complaint about this was inadequate

18. As noted above in paragraphs 8 and 9, Mr and Mrs C expressed concern at the time of the footpath's construction that it would lead an increased number of pedestrians onto their land. The Council were aware of the letter they sent to the Community Council about this on 29 February 2004 and responded to the Community Council on 16 March 2004. The relevant Council officer (Officer 3) also arranged to meet with Mr and Mrs C. At that meeting, Mrs C recalls that Officer 3 suggested the continuation of an existing wall to mark the end of the public footpath and prevent pedestrians walking onto the private land. There is no written record from the Council of this meeting or of the suggestion to extend the wall.

19. Following the visit from Officer 3, Mr and Mrs C wrote to their councillor to progress the issues addressed at the meeting and he responded on 21 April 2004, saying that he had passed their concerns on to 'senior managers in this part of the Council's services'. There was no further response from the Council to these matters until Mrs C wrote again to her councillor on 4 March 2006.

20. From that time until October 2006, there were exchanges of letters between Mr and Mrs C and the Council, the final exchange being with Mr and Mrs C's solicitor. These letters focussed on the issues of pedestrians walking across Mr and Mrs C's land and concerns about the use of the south side of the street as the preferred pedestrian route to the primary school. Throughout this correspondence, Mr and Mrs C looked for the Council to construct a barrier to discourage pedestrian access to their land and the Council refused this on safety grounds. Throughout this correspondence, Mrs C expressed concern about delays in receiving response from the Council.

21. On 10 November 2006, Mrs C made a formal complaint to the Council about the handling of these issues. They received a response from the Chief Executive, sent on 12 January 2007, which raised the possibility of seeking a solution by installing a footpath around the boundary of Mr and Mrs C's land. The Chief Executive apologised for the delay in responding to Mr and Mrs C's complaint and described the time taken to resolve the substantial issues as 'not acceptable'. This letter was followed up on 5 February 2007 by a visit from Officer 2 to Mr and Mrs C's home during which a number of concerns about the proposal were discussed. Mr and Mrs C again expressed their view that the opposite side of the street was a more sensible choice for a pedestrian route to the primary school. Officer 2 wrote to Mr and Mrs C on 12 February 2007 to confirm his understanding of the agreement to pursue the option of a footpath on the south side of the street, around the boundary of Mr and Mrs C's property.

22. Following further exchanges of correspondence, Officer 1 visited Mrs C at home on 13 July 2007 and discussed some details about the proposed footpath, including the agreement to erect a metal fence or railing at the end of the existing footpath to discourage pedestrians from crossing Mr and Mrs C's land. Mr and Mrs C continued to express their concerns to the Council about aspects of the proposals, including the adequacy of drainage provisions and the impact of the path on two trees close to its proposed route.

23. On 4 December 2007, the Council notified residents of their plans to construct the new path, including a drawing of its proposed location. They asked for any objections to be submitted by 17 December 2007. Mr and Mrs C were concerned that the map circulated was inaccurate and differed from the one sent to them on 13 November 2007. The differences included an alteration to the portion of the footpath at the western corner of their land. The first map reflected the proposed design as discussed in the meeting of 13 July 2007 (see paragraph 22). The second removed the proposed portion of footpath which would have joined the new path to the 2004 path.

24. At the time of writing, the Council had consulted with the Community Council about the construction of the footpath and the Community Council had expressed their support for this proposal. The Council intended to undertake further detailed consultation with the individual property owners along whose boundaries the footpath would be laid.

(b) Conclusion

25. There is clear evidence that the Council did not follow-up the proposals to address Mr and Mrs C's concerns in 2004 when it became clear to them that the new footpath was leading to an increase of pedestrian traffic across their land. From the time that Mrs C contacted the Council again in March 2006, there were regular exchanges of correspondence between the parties, with Mrs C seeking a practical solution to the problems she was experiencing as a result of the increased numbers of pedestrians.

26. This correspondence shows a difference of view between Mrs C and the Council over the most appropriate way to address the need for a safe route between the school and the village's main street. The merits of the Council's judgement about the safety issues here are not under investigation, but it was reasonable for the Council to take such factors into account when deciding on the best way to address Mrs C's concerns. It was also, therefore, reasonable for the Council to focus on measures to mitigate the effect of the new footpath on Mrs C's property.

27. Mrs C consistently proposed that the Council should erect a barrier to prevent pedestrians from straying onto her land. This was the remedy discussed at the meeting between Officer 3 and Mr and Mrs C in 2004. However, the position adopted and maintained by Officer 1 since May 2006 was

that a barrier would not be a sensible solution as it may, in fact, cause further safety problems. Mrs C strongly disputed this position and focussed on her primary concern which was that pedestrians should not be crossing her land.

28. Although it would have been possible for Mrs C to construct a barrier at the edge of her property, she considered that the problems she was facing had their origins in action by the Council and that the Council were responsible for providing an appropriate solution. I have already concluded that the Council bears some responsibility for the problems Mrs C has faced with pedestrians crossing her land. Indeed, the Council have also accepted a responsibility for identifying a practical solution to this issue. Clearly, it has taken longer than either party would have wanted for this matter to come to an acceptable conclusion, but it appears that such a conclusion is now within reach.

29. By January 2007, the Council had turned to the proposal of a footpath to address the pedestrian problem. The presence of a new footpath around the edge of the property would also make it possible to consider a barrier at the place where the 2004 path terminated, as pedestrians would now have a means of avoiding walking over Mrs C's land without having to walk on the main road.

30. In general, since the first half of 2006 the Council were actively engaged in seeking a solution to this problem. The protracted nature of the negotiations over the solution was due in part to strongly conflicting views about the safest way to assist pedestrian traffic between the school and the village, partly due to Mr and Mrs C's loss of trust in the Council's intentions and partly due to disagreements over the details of proposed remedies. As the party responsible for the circumstances that led to Mr and Mrs C's problems – however unwittingly – the Council bore the major responsibility for bringing the matter to a timely and satisfactory conclusion. However, the Council were obliged to ensure that any solution did not compromise their serious concerns about road safety.

31. On balance, I conclude that, if the Council had been more attentive to the issues raised by Mr and Mrs C in 2004, it is unlikely the dispute would have become as protracted as it did. I also conclude that, since May 2006, the Council have actively sought a solution that meets the diverse needs of the village's residents, including Mr and Mrs C. However, it is possible that the Council could have facilitated a quicker resolution by an earlier identification of the solution that was eventually agreed. For these reasons, I uphold this complaint.

(b) Recommendation

32. In paragraph 21, I noted that the Chief Executive has apologised for the time it has taken to conclude this matter and the practical solution to Mr and Mrs C's concerns is now being progressed. This is a reasonable remedy for the concerns highlighted in this report and the Ombudsman has no further recommendation to make. However, I have noted Mrs C's concerns about the time taken for the Council to respond to her correspondence and remind the Council of their commitment to ensure timely responses to complaints.

33. 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.

Explanation of abbreviations used

Mrs C	The complainant
The Council	Scottish Borders Council
Mr C	Mrs C's husband
Officer 1	A senior officer from the Council's Technical Services department
Officer 2	The Director of the Council's Technical Services department
Officer 3	Officer 1's predecessor