

Scottish Parliament Region: West of Scotland

Case 200502776: Renfrewshire Council

Summary of Investigation

Category

Local government: Policy/administration

Overview

The complainant (Mr C) raised concerns regarding enforcement action which was taken against him by Renfrewshire Council (the Council). This action related to the unauthorised retail use of his premises on an Industrial Estate within the Council's area (the Estate). Mr C did not believe this action to be consistent with the treatment of other businesses carrying out similar retail activity on the Estate.

Specific complaint and conclusion

The complaint which has been investigated is that, in taking enforcement action against Mr C, the Council treated him unfairly when compared with their treatment of other businesses on the Estate (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. In March 2006 the Ombudsman received a complaint from a man (referred to in this report as Mr C) regarding enforcement action which had been taken against him by Renfrewshire Council (the Council). The action related to the unauthorised retail use of his premises on an Industrial Estate (the Estate) within the Council's area. Mr C felt that the Council were being selective in taking action against him and one other company when a number of businesses trading on the Estate also appeared to be acting in breach of planning regulations.

2. The complaint from Mr C which I have investigated is that, in taking enforcement action against Mr C, the Council treated him unfairly when compared with their treatment of other businesses on the Estate.

3. Mr C had raised concerns regarding the appropriateness of the enforcement action taken against him by the Council, with the Scottish Executive Inquiry Reporters Unit (SEIRU)¹. However, under Section 7(8) of the Scottish Public Services Ombudsman Act 2002, those concerns are outwith the jurisdiction of this office and my investigation has focussed solely on the consistency of the action taken against Mr C in relation to the Council's treatment of other businesses on the Estate.

4. In addition, it has not been my role to consider specific breaches of planning regulations by other businesses in the context of this complaint and I have, therefore, not investigated the detailed concerns Mr C had raised regarding the activities of one particular business on the Estate.

Investigation

5. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. I have had sight of the Approved Glasgow and Clyde Valley Structure

¹now the Department of Planning and Environmental Appeals (DPEA). On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive.

Plan (2000), the Adopted Renfrew Local Plan (1996), the Renfrewshire Local Plan – Finalised (2001) and the Town and Country Planning Act 1997.

6. 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.

Complaint: In taking enforcement action against Mr C, the Council treated him unfairly when compared with their treatment of other businesses on the Estate

7. In a fax dated 26 November 2002, the employee of another business on the Estate brought it to the Council's attention that Mr C's business was operating in breach of planning regulations. He stated that this breach was as a result of Mr C retailing products which were purchased from an external source rather than products manufactured on site.

8. The Council then began corresponding with Mr C and a Planning Contravention Notice was subsequently served on 3 March 2003. The Council noted that Mr C had not made a retrospective planning application and that the unauthorised use of his unit had not ceased. In reference to Mr C's stated intention to manufacture some of his future products on site, the Council advised that all products sold from the premises should be manufactured on site. The Council, therefore, stated their intention to seek authorisation to serve an Enforcement Notice on Mr C. They also advised that other unauthorised retail businesses situated within the Estate were also being investigated.

9. The Director of Planning and Transport subsequently submitted a report to the Planning and Development Policy Board (the Board) on 25 March 2003. This report requested authority to take enforcement action against Mr C in connection with the unauthorised retail use of his premises and the recommendation of the Board was that this authority be granted. Section 5.1 of the report (Material Considerations) stated that:

'Due to the fact that the council has presently a number of similar active cases involving the unauthorised change of use of premises to retail use it is essential that action is taken to preserve the industrial function of the estate.'

10. Following the Board's recommendation, a letter was issued to Mr C on 7 May 2003 advising him of the Board's decision and inviting him to contact the Council's Economic Development Department to explore other suitable options.

11. An Enforcement Notice requiring Mr C to cease the unauthorised retail use of his premises was subsequently served on 26 May 2004. The stated reason for the notice was that:

'The Council would not consider it acceptable to operate a retail business of this nature from an area zoned for business and industrial use only as it would be detrimental to the Industrial Estate as a strategic industrial location and would have an adverse affect on town centres.'

The notice was scheduled to take effect on 30 June 2004 unless an appeal was made prior to that date.

12. Mr C lodged an appeal with the Scottish Ministers on 29 June 2004 and his appeal was upheld with the necessary planning permission granted on 27 October 2004. However, the Council appealed this decision to the Court of Session on 8 December 2004 and, prior to the case proceeding to a full Hearing, the Scottish Ministers conceded that a SEIRU Reporter's decision to uphold Mr C's appeal should be quashed. Mr C was given the opportunity to seek legal advice and formally oppose this outcome by 20 August 2005, however, there is no evidence of him having done so. His appeal decision was subsequently quashed by a decree dated 30 August 2005 and the case was then referred back to SEIRU to appoint another Reporter. It has come to light that this matter was overlooked, however, I understand that it is now being progressed as a matter of urgency.

13. Mr C complained to the Council in a letter dated 29 January 2006. He advised of several businesses which were breaching planning regulations by retailing on the Estate without being served with Enforcement Notices and he questioned whether the Council's actions against him (and one other company) were fair and unbiased.

14. The Head of Planning responded to Mr C on 24 February 2006 and assured him that he had not been treated differently to other businesses on the Estate. The Head of Planning stated that the reason enforcement action was taken against Mr C was that he was conducting a business which did not have planning permission and confirmed that this remained the position. He

acknowledged his awareness that a number of other businesses were operating on the Estate without planning permission for some aspects of their use. He confirmed that these businesses were currently the subject of investigation, however, he advised that it was not usually possible to deal with a large number of cases at the same time.

15. Mr C subsequently reiterated his concerns in a letter to the Head of Planning dated 1 March 2006, however, in his response letter of 7 March 2006, the Head of Planning did not add anything further to his previous comments other than to confirm that he was currently investigating other apparent breaches of planning legislation on the Estate with a view to enforcement action. Mr C subsequently raised his concerns with the Ombudsman on 20 March 2006.

16. During a telephone call with the Council's Planning Department on 18 August 2006, the Council advised the Ombudsman's office that, due to the scale of unauthorised activity on the Estate, the Council were dealing with the problem in tranches, with a report on the investigation of a number of other units due to be presented to the Board soon (subsequently presented in December 2006) and further reports to follow. It was also advised that Mr C's business was not the first to be investigated and that, as well as receiving a report regarding Mr C's retail activity from one of his competitors, attention was also drawn towards the unauthorised activity by the numbers of signs Mr C used to advertise his business in the area.

17. Due to a delay in the presentation of the report referred to in paragraph 16, I made further enquiries of the Council in a letter dated 9 November 2006. In their response letter of 4 December 2006, the Council confirmed that it was an ongoing process to keep records of unauthorised use of properties up-to-date and that they currently had 24 open enforcement files relating to unauthorised retail use on the Estate. Of these 24 files, one was initially opened in 1996, two in 1999, five in 2004, 11 in 2005 and five in 2006. They then advised that their resources within enforcement were very limited and they highlighted that the initiation of formal action against 24 businesses within the Estate had generated a significant workload. In addition to the delays caused by their limited resources, they also confirmed that some of the businesses in question had been established over recent years and provided a useful service and employment, and the Director of Planning and Transport had, therefore, been reluctant to take swift action, but rather had tried to

negotiate with a view to the unauthorised businesses relocating to appropriate locations within the district. Attached to the Council's response was a copy of the proposed report which was subsequently presented to the Board on 5 December 2006 and authority was granted for enforcement action to be pursued.

18. Following a further enquiry letter which I sent to the Council on 9 July 2007, the Council responded on 13 August 2007 by sending a copy of a further two reports which had been submitted to the Board on 10 June 2003 relating to two other businesses on the Estate which were carrying out unauthorised retailing. Enforcement Notices were subsequently served on these businesses and took effect from 30 April 2004 and 6 August 2004 with both companies subsequently ceasing to operate on the Estate. The Council confirmed that such action required considerable resources and they advised that the level of enforcement activity was dependent on the resources available.

19. In their response letter, the Council also provided details of further historic enforcement action which had been taken against another business in relation to unauthorised retail trading from two separate units on the Estate. Enforcement Notices were served on each unit in 1993 and the company subsequently ceased trading from the units on 8 April 1995. They did note, however, that the business which subsequently took over the units was also in breach of the 1993 enforcement notice and that this had been included in the report put forward to the Board on 5 December 2006.

20. The Council also advised that the planning officer involved in Mr C's case can recall meeting with Mr C on two occasions at the Council's offices, once at his premises and also having numerous telephone conversations with him. They confirmed that on each occasion the Council's policy position was stated and that discussions also took place regarding potential solutions, including Mr C's proposal for a shop. They stated that Enforcement Notices were only served as a last resort and that there were various options available to all businesses which were served with notices, including assistance in relocating to more suitable locations and advice on how any alteration of their activities would comply with the Council's policy.

21. With reference to the businesses included in the report which was approved on 5 December 2006, the Council updated the position and advised that one company had since satisfied the Planning and Transport Department

that they use their premises solely for manufacturing purposes. In addition, one company had since vacated the premises and two had been given retrospective planning permission for ancillary trade showrooms, one in connection with a Class 5 use (manufacturing) and the other a Class 6 use (storage and distribution). Of the remaining businesses, it was advised that one company had applied for a Lawful Development Certificate for an Existing Use and a number of companies had submitted statements to try and establish that their activities were in relation to storage and distribution (Class 6) with ancillary trade showrooms. They confirmed that their Enforcement Officer was currently reviewing those cases. Although the Council acknowledged that further companies on the Estate appeared to be operating as retail outlets, they confirmed that they would firstly concentrate on addressing the premises identified in the 5 December 2006 report and that they did not have a timetable for action against other businesses due to their resource limitations. They advised that the businesses in the report were in the most prominent locations and, being grouped together, had a significant impact on the Council's policy and they hoped that, by taking action, it would serve as a warning to other existing occupiers and any potential occupiers wishing to locate to the area for retail use.

Conclusion

22. I can find no evidence to suggest that the Council acted unfairly or inconsistently in their treatment of Mr C. Throughout the process the Council repeatedly acknowledged their awareness that other businesses on the Estate were carrying out unauthorised retail activity and they explained the resourcing issues which were preventing them from addressing all of those breaches immediately. In addition, the Council have provided evidence of enforcement action taken against other businesses on the Estate, some as far back as 1993 and, more recently, in relation to action taken against a number of companies in 2006. This demonstrates that Mr C was not singled out for enforcement action. In summary, the Council have applied their discretion to arrive at the enforcement decisions whilst giving due regard to their available resources. I, therefore, do not uphold this complaint.

Recommendation

23. The Ombudsman has no recommendations to make.

Explanation of abbreviations used

Mr C	The complainant
The Council	Renfrewshire Council
The Estate	An Industrial Estate within the Council's area
SEIRU/DPEA	The Scottish Executive Inquiry Reporters Unit (now the Directorate of Planning and Environmental Appeals)
The Board	The Planning & Development Policy Board

List of legislation and policies considered

The Approved Glasgow and Clyde Valley Structure Plan (2000)

The Adopted Renfrew Local Plan (1996)

The Renfrewshire Local Plan – Finalised (2001)

The Town & Country Planning Act 1997

