

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200800352: Perth and Kinross Council

#### Summary of Investigation

##### **Category**

Local government: Building warrants; Certificate of Completion; habitation

##### **Overview**

The complainant (Ms C) raised a number of concerns relating to the issue of a Certificate of Completion by Perth and Kinross Council (the Council) for works undertaken to her flat in 2004/2005. She complained that some of the work had not been undertaken properly and that appropriate checks were not undertaken by the Council before they issued a Certificate of Completion. This was issued to the former owner of her flat (Mr F), who had applied for a building warrant for the repairs and work to refurbish the property. Ms C was dissatisfied with the consideration given by the Council to pursue Mr F to undertake the outstanding works, by enforcement or other action.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that the Council:

- (a) failed to ensure that grant-aided works were undertaken properly (*not upheld*);
- (b) failed to carry out appropriate checks before issuing a Certificate of Completion (*not upheld*);
- (c) failed to provide appropriate advice when a Certificate of Completion was issued (*not upheld*); and
- (d) failed to take enforcement or other action (*not upheld*).

##### **Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Ms C) purchased a refurbished second floor flat in May 2005. When she completed the purchase, Ms C was aware that there was no Certificate of Completion but had been told by her solicitor that it was passed as fit for habitation by Perth and Kinross Council (the Council). Her flat had been the subject of refurbishment and repair, which was carried out by the owner at the time (Mr F). Some works were undertaken under a repairs notice (served under Section 108 of the Housing (Scotland) Act 1987 (the Housing Act) on the owners by the Council in July 2004). Ms C stated that she was advised by Mr F that the works had been carried out in accordance with the Building Regulations.

2. Ms C complained that a problem with poor soundproofing became evident when the other flats were sold and occupied. Initially, the owner/occupiers as a group approached Mr F about the problem but, lacking resolution, contacted the Council in May 2006, asking them for assistance.

3. Ms C stated that the Council's initial reaction about what they would be able to achieve was positive and they arranged to meet with Mr F to try to mediate a satisfactory solution. However, she stated that the Council had subsequently informed her and the other owner/occupiers that there was no further action they could take on their behalf because Mr F had informed the Council that none of the works undertaken – either under the repairs notice or as part of the refurbishment of the property – had involved disruption of the soundproofing. Ms C stated that the Council had advised her and the other owners that there was no action available to the Council to take against Mr F under the Building Regulations and this was a private matter between the owner/occupiers and Mr F.

4. Ms C remained dissatisfied and pursued a formal complaint with the Council because she believed that they had failed to carry out appropriate checks while the works were ongoing, despite these being the subject of a local authority grant (£30,000). She believed also that the Council had an obligation to pursue enforcement action against Mr F because he had carried out works without the benefit of a building warrant. It appeared to her that the Certificate of Completion had been issued by the Council in error and she was dissatisfied, therefore, with what she saw as the lack of action on the Council's part to

resolve her complaint. She stated that her flat, in its current state, was impossible to sell because of the shortcomings in the soundproofing and fireproofing (because the insulation between the flats did not meet current standards) and she complained about the Council's lack of action to pursue Mr F with enforcement, or other action, to have the necessary work carried out.

5. The complaints from Ms C which I have investigated are that the Council:
- (a) failed to ensure that grant-aided works were undertaken properly;
  - (b) failed to carry out appropriate checks before issuing a Certificate of Completion;
  - (c) failed to provide appropriate advice when a Certificate of Completion was issued; and
  - (d) failed to take enforcement or other action.

### **Investigation**

6. My investigation of this complaint initially involved the examination of documents provided by the complainant. Subsequently, I made enquiries of the complainant and the Council and obtained their comments and relevant papers. I also obtained advice from the Scottish Government website.

7. I have identified the relevant legislation for the repair grant for which Mr F applied in respect of work to the first, second and attic floor of the property (the Housing Act, as amended by the Housing (Scotland) Act 2001 and separately, for building warrants, the Building (Scotland) Act 1959 (the Building Act) as amended in 1970) and I have considered the Council's procedures.

8. The administration of grants and of issues relating to building standards were administered in the Council respectively by Environmental Services (grants) and the Building Control Section (now Building Standards) who were responsible for the issue of building warrants and Certificates of Completion. These sections have been merged since then, with others, into the Environment Service.

9. 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.

**(a) The Council failed to ensure that grant-aided works were undertaken properly**

10. Ms C questioned the payment of grant by the Council for work which she stated was not of a satisfactory standard.

11. The Scottish Government website contains the advice that Councils can give grants for any work to bring a house up to the tolerable standard or put it in a good state of repair. Also, that grant assistance is not available for routine repair and maintenance work, but if the house is in a serious state of disrepair and does not meet the tolerable standard, Councils can serve a Repair Notice requiring the owner to fix what is wrong.

12. Under Section 243 of the Housing Act, payment of grant is made on condition that the works are executed to the satisfaction of the local authority. Further, the legislation states that the local authority's grants office may wish to check that a Certificate of Completion has been issued, if required, before authorising payment.

13. Mr F applied to the Council in June 2004 for a grant to carry out repairs to the first, second and attic floor of a listed residential property located in a conservation area. A statutory repairs notice (under Section 108 of the Housing Act) was subsequently served on Mr F, as an owner of a property in the building, in July 2004 which listed a schedule of defects - both external and internal work – which required to be undertaken to bring the building up to a tolerable standard. Two officers from the Grants Section of the Environment Service (Officers 1 and 2) explained to me at interview that it was not unusual for an application for grant to be made before the service of a statutory repairs notice where, as in this situation, the applicant had purchased part of the building with the intention of refurbishing it and the other owner or owners were not prepared to have mutual repairs carried out. The Council were satisfied that repair works were necessary and became involved in these circumstances to ensure that work was done. Under the terms of a statutory repairs notice, if the owner or owners do not comply, the Council can arrange to have the work carried out.

14. Listed in the schedule were defects in the timber joints (affected by wet rot), sagging/sloping floor joists and dry rot (affecting the second floor flat) and work on:

'Any other defect which could not reasonably have been ascertained prior to the service of the notice but which is required to be rectified to bring the house up to such a standard of repair as is reasonable having regard to the age, character and location, and disregarding decorative repair of the house.'

15. While there was reference to work to joists and plasterwork to the ceiling, there was nothing in the Council's housing repairs grant or building warrant files which showed that the owner intended to replace the flooring. However, the consulting engineer's report, which was submitted with Mr F's application for a repair grant, stated in the conclusions and recommendations section that:

'It will be necessary to level the floors within the building, which have suffered both floor joist deflection and distortion due to settlement of their supporting walls. It would also be beneficial to add a floating floor above the main floorboards in order to eliminate structure borne noise and vibration.'

16. In responding to notice of our investigation of the complaint, the Council confirmed that the grant-aided work did not include upgrading to separating floors (between the flats). At interview, Officers 1 and 2 confirmed this advice and informed me that very little internal work in the project was grant earning. Essentially, it related to what they described as the envelope of the building: roof/walls/chimney pots. Their concern was to ensure that the property was wind and watertight and in a decent external state of repair.

17. With reference to the engineer's report, in particular the section where there was reference to the levelling of floors and the benefits of a floating floor, Officers 1 and 2 said that floor levelling was aesthetic and not part of grant-aided work: the applicant did have to show that he had obtained a guarantee for the work to eradicate dampness; but even where this involved the replacement of floorboards, it was not a requirement for the payment of grant for Environment Services to check on the standard of insulation between the floors. Officers 1 and 2 explained that grant-aided works have to be completed to the satisfaction of the Council prior to the payment of grant and, in every case, the property would be inspected once the application for payment was submitted by the applicant or his agent. However, this inspection only consisted of a visual check that the works had been completed; that the property was in a wind and watertight condition; and in a reasonable state of repair. It did not include any intrusive inspection to ascertain the quality of the work.

18. The Council provided a flowchart of their procedures for grants from approval to payment and this confirmed that there was allowance for more than one inspection to be carried out, dependent on whether the applicant applied for an interim payment. The Council files recorded that the property was inspected in June and December 2004 and that grant payments were paid in three instalments; the biggest payment when 90 percent of the works were completed (Officers 1 and 2 stated that the outstanding work was re-pointing of the rear stonework and to the communal stairwell), with the final payment being made in April 2005.

19. Officers 1 and 2 commented that, given the cost of the project (in excess of £200,000) and the limited work which required to be carried out when final payment of grant was made, it was reasonable to make this final payment of grant even though all work had not been completed and a Certificate of Completion had not been issued. They explained that payment of grant was not dependent on the granting of a Certificate of Completion because not all work undertaken on a property would necessarily be grant-aided. When an applicant requested payment from the Council on completion of the grant-aided work, the Council were required, under the Housing Act, to make payment (within 28 days) even though work remained to be carried out, as in this case where the refurbishment involved the fitting of new bathrooms, kitchens, etc, after grant-aided work was done. Moreover, although the Council had to be satisfied that the grant-aided works were executed, this was not related to the quality of the works: Officers 1 and 2 commented that the checks undertaken were to satisfy themselves that the works had been completed. Further, the Council made clear that they were not a Clerk of Works and that applicants had to satisfy themselves with the quality of the works.

*(a) Conclusion*

20. A duty is placed on the Council to ensure that if a grant has been given for carrying out repairs, the works which are grant-aided are undertaken to their satisfaction. Ms C complained because she believed that lack of insulation between her flat and the flat above pointed to the repairs not having been carried out satisfactorily and that the Council had erred in paying a grant without checking the sound insulation.

21. Although some of the grant-aided work was for the treatment of dampness (necessitating the replacement of some of the floorboards), the list of works

which are grant earning does not include any that would involve the requirement to remove or replace deadening between the floors. In the circumstances, I cannot conclude that the Council have acted wrongly. I have not found that any problem associated with noise, through lack of insulation between the floors, is as a result of grant earning works for which grant has been paid. Nor have I seen evidence of grant earning works which should have been undertaken not being carried out. I do not uphold this head of complaint.

**(b) The Council failed to carry out appropriate checks before issuing a Certificate of Completion**

22. Ms C stated that she had received advice from her surveyor, before she purchased the property, that the issue of a Certificate of Completion should provide her with assurance that the property would be inspected to ensure that all works were carried out properly. She complained also that certain works were non-compliant (the fitting of down lighters). She also pointed to advice which she said was contained on the Council's website on Building Standards:

‘Almost all new building work from house extensions to a new roof light needs a Building Warrant and Completion Certificate to ensure that it is safe to use and fit for purpose. We ensure that all new or altered buildings comply with the Building Regulations which set national standards for building works.’

23. The Council had responded to Ms C that the website information was correct but the content could be expanded to explain the limitation of the warrant and completion certificate system.

24. In their comments, the Council have stated that the complaint under this heading highlighted a fundamental misunderstanding of the role of Building Standards. The Council have explained that, unlike in England and Wales, there is no requirement in the Scottish system for inspection at key stages in a project. It is the applicant's responsibility to be satisfied the works are carried out under the building warrant and regulations and, while the Council are required to inspect new drainage on completion, they are under no obligation to inspect other work which has been undertaken. However, in practice the Council do carry out an inspection before issuing a Certificate of Completion. The Council have confirmed that a final inspection was undertaken in respect of the property which was purchased by Ms C, and also those of her neighbours, which was in accordance with the Council's practice.

25. The Council have provided copies of the information (and the related procedures) which were made available by them to an applicant at the time Mr F applied for a building warrant<sup>1</sup>. This information provided an explanation of the Council's role and highlighted that the Council did not supervise work on site (many jobs would receive only one or two inspections) and that an applicant was required to submit a Certificate of Completion to the Council once the development was completed (as a declaration that the work was fully completed in accordance with the regulations). It was also recommended that a suitably qualified and experienced person was employed to oversee the work on an applicant's behalf. They have also confirmed that their current website contains information about site inspections and explains that the Council do not act as site supervisors and that an applicant is strongly advised to employ a suitably qualified person to oversee the work on the applicant's behalf.

26. With regard to the works carried out which could be non-compliant (as they were not included in the building warrant drawings) and might affect the noise transmission between the floors, neither the building warrant drawings nor the schedule of works included details of the fitting of down lighters. The Council have commented that no unauthorised work was undertaken to their knowledge after the issue of the Certificate of Completion and, in response to our enquiry on whether this should have been noticed during the inspection, they referred to the applicant's signed statement that the work had been undertaken in accordance with the approved plans and in accordance with Building Regulations. The Council commented that they found no reason at the time of the final inspection to withhold the Certificate of Completion; and they have no powers to cancel it or to take action if it subsequently comes to light that defects do exist.

*(b) Conclusion*

27. There is a fundamental difference here between the expectations of Ms C and her agents and the reality of what the Council are required to do under the regulations pertaining to building warrants and certification for works carried out. Ms C understood that the Council's role was more that of a Clerk of Works, who would check that the standard of work was reasonable, whereas the Council's

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<sup>1</sup> Scottish Government advice on their website describes a building warrant as the legal permission to start building work, or to convert or demolish a building, and that it is an offence to carry out work that differs from the approved plans issued as part of the building warrant or an amended building warrant.



duty was to make reasonable inquiry to establish that the work complied with the warrant and, if satisfied, to grant a Certificate of Completion.

28. The legislation does not set out what checks the Council should take before issuing a Certificate of Completion. However, the Council have confirmed that they do inspect and that they followed their usual practice in this case. Ms C believed that she could take comfort from a Certificate of Completion that the Council were certifying the quality of the work undertaken to the property but this proved to be a misunderstanding of the Council's role. The Council have stated that their website has been expanded to explain more fully their role in this regard. Although I can understand that Ms C was upset, I do not have grounds to criticise the Council and I do not, therefore, uphold this head of complaint.

**(c) The Council failed to provide appropriate advice when a Certificate of Completion was issued**

29. Ms C stated that she was aggrieved that, as the purchaser of a flat which was marketed as a luxury development, she could not place reliance on the Certificate of Completion which had been issued by the Council to Mr F, as she believed that this was to provide an assurance about the work which was carried out.

30. In their comments under this heading, the Council have disputed that they failed to provide appropriate advice when the Certificate of Completion was issued and commented that they endeavoured to make the limitations of the system clear. However, this should be seen in the context that the Certificate of Completion was not issued to Ms C but to Mr F, as the applicant who had certified that the work was completed in conformity with the building warrant which had been granted.

31. The Certificate of Completion, which was issued by the Council on 2 November 2005, certified that, as far as they were able to ascertain after taking all reasonable steps, the work authorised by the warrant (and amended warrant) was completed in conformity with the warrant and in accordance with the relevant regulations. The standard letter which was issued to Mr F when the Certificate of Completion was granted contained a warning, in bold lettering, that the issue of a Certificate of Completion was no guarantee of standard of workmanship. Ms C was then the owner of one of the properties which had

been the subject of building warrant but had purchased before the Certificate of Completion was issued in respect of her flat.

32. Ms C's solicitors have clarified their position to Ms C. They informed her that when she completed the purchase of the property, the Certificate of Completion was not available as the property had only been passed as fit for habitation immediately prior to her date of entry. They had, therefore, proceeded on the basis of verbal confirmation from the Council that the property had been passed. The solicitors confirmed to Ms C that this was standard practice in situations where a property is either newly constructed or has been altered, as it often takes some weeks for the paper Certificate of Completion to be issued and developers are generally not prepared to wait until the Certificate of Completion is available.

*(c) Conclusion*

33. The evidence I have obtained confirms that the applicant who applied for and was granted a Certificate of Completion was provided with appropriate advice in the form of a standard letter, which makes it clear that this is not a guarantee of standard of workmanship. Ms C's interest in this was from the perspective of a third party to the granting of the Certificate of Completion. I cannot, therefore, find that the Council failed to provide appropriate advice when a Certificate of Completion was issued.

34. This complaint highlights that members of the public can have a misconception about a local authority's role in building control matters. Ms C, and the agents acting for her in the purchase of the flat, placed reliance on the advice given by the Council that the property was fit for habitation. At that time, a Certificate of Completion had not been applied for and the sale appears to have proceeded on the basis of informal advice received from the Council that the flat was habitable. However, as stated above, even if a Certificate of Completion had been issued before the purchase was completed, this would not have provided a guarantee of the standard of workmanship and would have been insufficient for the purpose of giving Ms C, as the prospective buyer, an assurance about the standard of work which had been carried out. I do not uphold this head of complaint.

**(d) The Council failed to take enforcement or other action**

35. Ms C contacted the Council in May 2006, some seven months after the Certificate of Completion had been issued to Mr F and after the flat above her

(attic) was sold and occupied. In response to the owners' complaint to him, Mr F had arranged for an acoustic test to be undertaken in the building. Ms C and her co-owners had also commissioned an engineer's report. She informed the Council that both reports suggested that work carried out to the floors and ceilings of the property had compromised the soundproofing. She sought the Council's help in resolving the situation, given Mr F's refusal to accept responsibility for remedying the problem.

36. Documentary evidence made available to me by the Council confirmed that the Council investigated the issues raised by Ms C. They wrote in May 2006 to the agents for Mr F about the noise problems being experienced by the current owners because of the lack of sound insulation and pointed out that it appeared, from the evidence which had been provided to them, that work had been undertaken during the refurbishment without the benefit of building warrant (substantial replacement of flooring) and that work may not have been undertaken in accordance with the information contained on the building warrant plans, which stated that the sound insulation would be restored.

37. Consulting engineers acting for Mr F responded to the Council with advice that the floors had not been entirely replaced and, elsewhere, work only involved the replacement of defective plaster. Further, no sound insulation was removed from the building and works which were carried out constituted an improvement to the existing separating floors. Without any admission of liability, their client had commissioned a study into possible ways the owners could increase sound insulation between flats. There was no reference to the fitting of down lighters (see paragraph 26).

38. Subsequently, through her local councillor and MSP, Ms C received confirmation in September 2006 that, although it was not traditional for the Council to take action once a Certificate of Completion had been issued, due to the nature of the problems an opinion had been reached within Building Control that the Council should take enforcement action against Mr F but advice was being sought from the Council's solicitor. The Council also sought views and advice from the Building Standards Division in the Scottish Government (formerly the Scottish Building Standards Agency) and the Scottish Association of Building Standards Managers. In November 2006, the Council met with Ms C and her co-owners and explained that differing views had been expressed within the Council about whether or not they could take action because the Certificate of Completion had been issued but that, if they could, the current

owners should be aware that this would not be against the former owner (Mr F) but would have to be taken against them because they currently owned the property.

39. Ms C complained that the Council had failed to explain to her why, having informed her, initially, that they would take action against Mr F, they changed their mind.

40. In their comments on the complaint, the Council confirmed that a Building Control officer had initially suggested that he thought the Council could force Mr F to undertake improvements. However, this decision was overturned by a more senior officer who decided that the Council had no power, under the Building Control legislation, to take action against Mr F once the Certificate of Completion had been issued. The only circumstances where this would be possible would be if it were known that the work had been undertaken after the Certificate of Completion was issued.

41. Ms C had questioned the need for both a building warrant and Certificate of Completion when the Council had no right of action against the applicant if it subsequently transpired that the Certificate of Completion should not have been issued. She clarified that she believed that they did not inspect the works which were carried out and that there was a lack of detail on the building warrant. She stated that the Council had admitted that works had not been done appropriately and were done without a building warrant.

42. In responding to our enquiries on this issue, the Council have commented that, once the Certificate of Completion was issued, they had no justification under the terms of the Building Act to take enforcement action in this case because the work was done with building warrant approval and no unauthorised work was undertaken to the Council's knowledge (ie, after the issue of the Certificate of Completion).

43. While the Council have acknowledged that the property itself did not meet current building regulation standards<sup>2</sup> (which they raised with Mr F, who

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<sup>2</sup> In accordance with the Building Standards regulations the property, when constructed, would have required to have complied with the regulations in place at that time and any works subsequently undertaken are required to comply with the regulations in force at the time the works are carried out.

asserted that the building had been improved by comparison to its original condition and that any remedial work had replaced materials on a like-for-like basis), Mr F had certified that the works carried out under a building warrant complied with the Building Regulations. The Council commented that Building Standards had a responsibility to ensure the approved plans showed compliance with Building Regulations; or that the plans did not show that the alteration carried out would make a building fail to comply to a greater degree; and that it was the responsibility of Mr F, having been granted approval for building operations, to undertake the work in a professional manner in compliance with the approved plans and the Building Regulations. The Council commented also that, while they did not condone works of a non satisfactory standard, it was not their role to oversee that these were completed to a satisfactory standard.

*(d) Conclusion*

44. I can appreciate that Ms C's hopes would have been raised when the Council took action to tackle the problem with Mr F, after the owners discovered that there was a problem in their property because of lack of soundproofing. However, I have not seen evidence from their subsequent actions that the Council's decision not to proceed was taken lightly, without proper consideration of the options and consequences to the current owners of taking enforcement action.

45. When he applied for a Certificate of Completion, Mr F was declaring that the work had been completed in accordance with the building warrant which had been granted. The Council have confirmed that, following inspection, they were satisfied that the works carried out complied with the building warrant and a Certificate of Completion was issued on this basis. With the change of ownership, Ms C as the purchaser and new owner, in conjunction with her co-owners, became responsible for any defects in the property which might come to light subsequently, in accordance with the title deeds and any conditions of sale pertaining to the purchase. This situation highlights the importance of seeking professional advice for conveyancing and that the production of a Certificate of Completion is not a guarantee of workmanship.

46. As the Council have previously advised Ms C, because a Certificate of Completion has been issued, if it was determined that work had not been undertaken properly, then any notice of enforcement would be served on her as the current owner. I appreciate that she will be disappointed with my findings

on her complaint but I am unable to criticise the Council's decision not to proceed to take enforcement action. I am satisfied that the Council fully explored their options but decided not to take the only action which they concluded it was open to them to pursue, through the service of an enforcement notice on the current owners. They have explained their reasons for this and in all the circumstances, I do not uphold this head of complaint.

**Explanation of abbreviations used**

Ms C	The complainant
Mr F	The former owner of Ms C's flat
The Council	Perth and Kinross Council
The Housing Act	Housing (Scotland) Act 1987
The Building Act	Building (Scotland) Act 1959
Officers 1 and 2	Two officers from the Grants Section of the Environment Service

**List of legislation and policies considered**

Housing (Scotland) Act 1987 and 2001

Building (Scotland) Acts 1959 and 1970