

Scottish Parliament Region: West of Scotland

Case 200501692: Renfrewshire Council

Introduction

1. On 22 September 2005 the Ombudsman received a complaint from the owner of a house in Paisley (referred to in this report as Ms C) concerning the way Renfrewshire Council (the Council) handled her requests for a vehicular footway crossover.

2. Ms C complained that approval of her application in 2003 for a vehicular footway crossover was rescinded; and that when she reapplied in 2005, her application was refused for a reason relating to the existence of a street lighting column to which the Council had not previously referred. She considered that decision to be discriminatory when a friend of Ms C had obtained consent in 2004 in what Ms C considered to be similar circumstances.

3. Following investigation I was unable to uphold the complaint. I considered that the Council's decision to grant and withdraw permission in 2003 was unfortunate but it had not been pursued by Ms C with this office at the time. With the second application it was within the Council's proper consideration of the matter to refer to the existence of the street lighting column. Thirdly, there were differences in the circumstances obtaining at Ms C's house from the acquaintance who had been granted consent for a vehicular footway crossover. While the complainant is clearly disappointed not to obtain consent I conclude that there was no maladministration or service failure by the Council.

Investigation and findings of fact

4. Ms C provided me with correspondence relating to her applications and pursuit of her complaint with the Council. I made a written enquiry of the Council and gave the complainant the opportunity to comment on the Council's response. Ms C and the Council have had the opportunity to comment on a draft of this report.

5. Shortly after moving into her end terraced house in early 2003 Ms C applied for and was granted permission by the Council's Roads Maintenance Section on 1

April 2003 under the Roads (Scotland) Act 1984 to form a vehicular footway crossover providing access over a lay-by which had been constructed by the roads authority several years before. The Council stated that the housing opposite the complainant's home consists of three storey tenement properties with limited off street parking and that construction of the lay-bys in the street followed numerous complaints and public demand and was funded from the Housing Revenue Account. Ms C commented that the source of funding in her view is irrelevant and that the tenements opposite her house have off street parking to the rear which is unused and overgrown.

6. On further consideration, the Roads Maintenance Section decided to rescind the decision and wrote to Ms C on 7 May 2003. She contacted her local councillor and a meeting on site was arranged. On 28 May 2003 the Head of Roads wrote to Ms C confirming the decision to withdraw the approval. The Head of Roads described the previous decision to approve as 'inappropriate' since the works did not constitute permitted development in terms of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. The Head of Roads stated that the main reason for rejecting the proposal was one of road safety from her vehicle emerging on to the highway but that, in addition, space in a recently provided parking lay-by would be reduced. The Head of Roads accepted that there were other footway crossovers in the same road which had already been in place for a number of years but that that did not in his view justify increasing the locations where risk would exist. Ms C agreed that road safety is an issue but said that road safety should have been an issue when two neighbours were granted permission some years ago for pavement crossings with poor visibility and at what she considers is a hazardous part of the highway.

7. Ms C engaged the services of a solicitor who wrote to the Council on her behalf. The Head of Roads responded to the solicitor on 30 October 2003. He confirmed that the crossover was not permitted development under article 3 (5) of the 1992 General Development Order. Consequently the complainant would only be authorised to do the work if she were granted planning permission in the normal way. The Head of Roads apologised for any inconvenience caused to Ms C by the decision by the Roads Maintenance Section conveyed on 7 May 2003 to retract the consent which they had previously given.

8. Ms C did not contact the Council again until 2005. On 17 February 2005 she made a further request to the Planning and Transport Department for permission for a vehicular footway crossover and enclosed the appropriate fee of £40. In response, the Head of Roads wrote to Ms C on 2 March 2005 restating the previous decision to refuse consent because of road safety considerations. He also stated that a street lighting column would require to be moved which would require accommodation works within the footway and a further consideration was that there would be a loss of a parking bay space in the lay-by which had been constructed for use by residents.

9. The complainant responded in a letter of 9 March 2005 pointing out that permission had been granted in February or March 2004 to a friend and colleague at a specified address to cross over an existing parking bay, grass verge and footpath next to a primary school and public path long after the parking bay had been provided. The complainant also stated that she personally saw no need to move the street lighting column (which is situated on the heel of the public pavement). Ms C received no immediate response to her letter.

10. Ms C says she made several calls to the Roads Maintenance Section seeking clarification of the basis on which her application had been refused. In response she was provided with sections of a document entitled 'Guidelines for Development Roads' prepared by the Director of Roads of the former Strathclyde Regional Council in 1986. On reading through this with her solicitor she found no specific guideline which would prohibit her from having off road parking. She formed the view that she was being discriminated against and considered the vagueness of the guidelines allowed officers too much discretion.

11. On 13 May 2005 Ms C wrote to the Director of Planning and Transport at Renfrewshire Council asking him to highlight the policy basis for refusal. The Director responded on 13 June 2005 stating that clause 16.11 of the guidelines provided that 'no frontage access will normally be permitted where parked vehicles would interfere with junction sightlines'. The road in which Ms C's house is situated (a bus route and high volume traffic artery) was considered to be a local distributor road. Table 1 in Section 10 of the guidelines stipulated that in such circumstances 'no frontage access permitted'. The Head of Roads accepted that the geometric layout of the complainant's road did not conform to current standards. While

frontage accesses did exist, these non-conformities predated Renfrewshire Council coming into existence on 1 April 1996. The Director stated that while there were no specific guidelines prohibiting off road parking and current Council policy was to encourage such provision, the Council considered Ms C's proposed access to the public road was not safe and the Council had been granted powers under section 1 of the Roads (Scotland) Act 1984 to determine the means by which the public right of passage over a road or any part of it may be exercised. The Head of Roads confirmed that the decision to refuse had been taken on road safety grounds.

12. In the absence of receipt of a reply to her letter of 9 March 2005 (paragraph 9) Ms C submitted a formal complaint to the Council on 14 June 2005. The formal complaint crossed in the post with the Head of Roads' letter of 13 June 2005.

13. Ms C responded to the Head of Roads' letter on 17 June 2005. She stated that she remained aggrieved. Whereas her own application had been refused on road safety grounds, Ms C agreed that other already existing footway crossovers in her road should be closed for the same reason.

14. The Head of Roads replied on 20 June 2005 acknowledging that Ms C's formal complaint had crossed with his reply. He apologised for the delay in sending out his response which in part had occurred due to senior staff arranging a visit to the site to ensure that Ms C's application was given every consideration.

15. Ms C's letter of 17 June 2005 was regarded as an appeal against the Head of Roads' letter and was passed to the Director of Planning and Transport. He replied on 24 June 2005. Commenting on Ms C's observation that existing crossovers should be closed, the Director pointed out that there were practical difficulties in rescinding previous permissions which had been implemented since, under section 69 of the Roads (Scotland) Act 1984, the roads authority would not close off a private access without providing a new means of access.

16. Ms C remained unhappy and complained to the Ombudsman on 14 September 2005. That complaint was received on 22 September 2005. After obtaining further information and photographs from Ms C it was considered that the complaint had been through the complaints procedure of the Council and merited investigation. The investigation commenced on 12 October 2005 and the Council were invited to

address three specific issues namely the planning position, the need to remove the street lighting column, and the complaint of unfair discrimination relating to her friend and colleague (paragraph 9).

The Council's Response to the Complaint to the Ombudsman

17. The Council responded to my enquiry on 24 November 2005. They confirmed that Ms C did not contact the planning service after May 2003. Ms C's letter of 17 February 2005 (paragraph 8) requested permission to construct a vehicular crossing over the footway to the front of her house. The Council say that no indication was given to Ms C at that time relative to the likely success or otherwise of her request. They stated that had Mrs C applied for planning permission at that time, the Planning and Transport Department would have refused the application on road safety grounds under delegated powers. In the event that there had been more than five objections the application would have been submitted to the Planning and Development Policy Board for consideration with a recommendation of refusal

18. The Council said that Ms C's letter of 9 March 2005 (paragraph 9) acknowledged the existence of the lighting standard and stated that she would construct her driveway at a slight angle to avoid moving the lighting column. The Planning and Transport Department considered that the lighting standard would require to be moved to avoid the need for such an angled driveway. The rationale for this decision is that when cars are parked on both sides of a road, a car entering the restricted road width at an angle decreases the driver's visibility. An angled driveway would also require a vehicle to be reversed into the driveway causing additional hazard for pedestrians.

19. The Council's Planning and Transport Department considered that the physical environment at Ms C's home is quite different to that obtaining at the home of her friend (paragraph 9). Ms C's friend's house is situated on part of a dual carriageway section of road where the car exiting the driveway has one flow of traffic to contend with and can only exit to the left. Ms C's home is situated on a single carriageway with two way traffic and has traffic calming measures. The Council stated that the housing in the vicinity of the friend's house was less dense and commented that the lay-bys in Ms C's road were provided out of the Housing Revenue Account in response to public demand.

The Complainant's response

20. The complainant was given the opportunity to comment on the Council's response and did so in a letter of 6 December 2005. She stated that she had not been informed by the Roads section of the need first to apply for planning permission for the pavement crossing. With regard to the street lighting column she stated that the angle of her proposed driveway was less than ten degrees and that there was in her view absolutely no need to move the column. She could situate off road parking to the front of her house creating a straight driveway to the front door. Ms C saw no difference between the manoeuvres into the driveway than from exiting the lay-by. There would be no additional hazard to pedestrians. Finally, Ms C stated that the same argument of loss of a parking space in a lay-by also applied to her friend who was allowed to cross over a constructed parking bay.

Conclusions

21. It was unfortunate that Ms C was first issued with roads consent on 1 April 2003 for the crossover only for that consent to be rescinded some five weeks later. An apology was tendered by the Director to her solicitors on 30 October 2003 for the inconvenience caused to Ms C. The matter was not pursued.

22. The street lighting column was not previously referred to in 2003 when the previous decision was rescinded. I view it as ancillary to the main reasons for refusal which relate to road safety and the loss of use of a publicly funded lay-by space. It would not in itself be a basis for refusal. The Council have discretionary powers under the Roads (Scotland) Act to consider such a request and appear to me in Ms C's case to have properly exercised their discretion and have provided reasons to her for not approving the application.

23. The Council have stated that they do not consider that the situation obtaining at the complainant's house and that of her friend (paragraph 9) are identical. They maintain that different circumstances obtain which warranted the different outcomes. I am unable to find that Ms C was discriminated against.

24. I do not uphold the complaint.

28 March 2006

Annex 1

Explanation of abbreviations used

Mrs C

The complainant

the Council

Renfrewshire Council