

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200500677: Fife Council

#### Introduction

1. On 27 April 2005 the Ombudsman received a complaint from the leader of a youth group (Mr C) that Fife Council had been guilty of maladministration in relation to a youth group's proposals to develop a skateboard facility in a Fife village. My investigation found that there was no maladministration by the Council but that there appeared to be some demand for the facility and it was unfortunate that a location in the village acceptable to the youth group could not be identified.

2. Mr C alleged that the Council had failed to give proper information from the outset with regard to the planning position and that, subsequent to the group's appeal to Scottish Ministers, had not allowed the group to implement their planning consent and had colluded with others to subvert the democratic process with regard to a ballot taken in the community.

3. I did not uphold the complaint.

#### Investigation and findings of fact

4. The complainant provided the Ombudsman's office with copies of relevant correspondence. An enquiry was made of the Council and Mr C had the opportunity to comment on that response. Both Mr C and the Council have had the opportunity to comment on a draft of this report.

5. Mr C is a group leader of a community youth group and was until 6 June 2005 also a community councillor in a village in West Fife.

6. In his letter of complaint to the Ombudsman, Mr C stated that, following concerns from adults and children regarding the lack of play facilities within the village, the Council's local Head of Community Services had indicated that there could be potential funding for play facilities and he had suggested that the Community Council, parents and children get together and prepare an application for funding. Prior to this, a group of young people and concerned parents had voiced the need for safe skateboarding facilities locally and a number of families

had suggested that there ought to be facilities for toddlers. Play facilities at the designated children's play area had deteriorated over the years. The Council say that their understanding was that a mothers and toddlers' group had already started fundraising and had been prepared to make arrangements with the Area Parks Manager to take forward a stand alone project.

7. Residents voiced their concerns to the local councillor and he made an application to Fife Council for £25,000 in a bid to secure funding initially for skateboarding facilities when a site had been identified.

8. On 20 January 2003, a sub-group was brought together by the then Chairman of the Community Council. They worked to develop an action plan for the installation of play facilities to accommodate all ages within the designated play area where children felt safe to play. According to Mr C, initially the objective was to establish skateboarding facilities. Toddlers' play facilities were tabled as a further objective and should more funding become available, a multi-sports arena was seen as an additional objective. The safest site for this was opposite the children's youth club to the west of the village. The Council say that the mothers and toddlers' group had previously negotiated for facilities for young children.

9. A series of meetings took place in which officers of the Council and the local councillor assisted. Various sites throughout the village were assessed for land availability, planning issues, visibility, potential noise nuisance and general safety. The group unanimously decided that the preferred option was Fife Council's designated play area adjacent to the village green (Park A), where the children already played and previous equipment had been sited. The land adjacent to the toilets was the preferred option to cater for toddlers' needs. The Council say that Council officers advised against locating a skate park on the village green and recommended another park (Park B) as more suitable and most likely to be extended not only to include a skate park but other sports facilities for the benefit of the village. The Council say that the mothers and toddlers' group were not involved in the other group's decision.

10. In February 2003, the local councillor sought guidance from the Council's Planning Service and a site meeting took place with Fife Council officers and Mr C. According to Mr C, the planning officer confirmed that there were no planning

issues involved and there was no requirement for a notification to develop. The site was already a designated play area, the proposal did not exceed a cost of £100,000, and no proposed structure exceeded four metres in height.

11. The youth group were advised by Fife Council to carry out a public consultation exercise and they sought guidance in this connection from Fife Council Community Services. A public meeting was held on 24 March 2003. According to Mr C, this was well attended. The Fife Council representative who chaired the meeting, confirmed that a full consultation and presentation would take place on 8 April 2003 when residents of the village would be able to vote to decide where the preferred site should be.

12. Prior to that meeting, the local councillor had canvassed the views of the Community Safety Officer of Fife Police whom he met on 4 April 2003. (The Community Safety Officer subsequently confirmed, in a letter of 30 April 2003, that he considered the best option for skateboarding facilities was at the village green area, near to the toilet block.)

13. On 8 April 2003, the consultation and vote took place in the local hall, organised by Fife Council's Community Services Department. Of the 180 persons present, 169 were in favour of a skate park in the village. The vote in favour of a skateboard park in the existing play park was 103 votes for and 77 against.

14. The group thereafter sought assistance from the Head of Fife Council's Community Services to prepare and submit an application to Fife Council for Scottish Executive monies allocated for such projects.

15. The local Community Council, however, subsequently requested that a meeting take place with Fife Council's locality office to discuss the proposals as they objected to the village green site and proposed an alternative at another park (Park B) in the village. That meeting was arranged for 12 June 2003 at the local office and comprised seven Fife Council officers, two members of the Community Council and the local councillor. According to Mr C, he was only invited to attend following the intervention of the councillor.

16. The planning officer at the meeting advised that in his view the proposal at Park A constituted a 'bad neighbour' development in terms of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. He suggested that an alternative site should be considered at Park B.

17. Subsequent to the meeting, the complainant's group met and decided to seek independent advice. On receipt of this, they decided to seek planning permission as an independent group rather than the proposal being pursued by Fife Council as a 'notification to develop' their own land.

18. The planning application utilised drawings and information supplied by an officer from Fife Council's Parks and Recreation Department for the approved equipment that had been used in previous skateboarding facilities elsewhere. The application for the formation of a skate park and toddlers' play area at Park A was made on 16 December 2003 and registered on 12 January 2004.

19. The application attracted eight letters of objection and three letters of support. In addition the group put forward a submission with 222 responses from village residents supporting a designated play area at the village green. A letter of representation from the chairperson on behalf of the Community Council stated that they regarded the skateboarding element as contrary to the recently adopted Local Plan, that the two uses of the site were incompatible, and that the skate park would generate significant levels of noise between 8pm and 8am in a conservation area. The Council's Parks and Amenities Service who had been consulted suggested that the park at the east end of the village (Park B) which had been gifted to the village in 1957, was a more suitable location. This was also the Community Council's preferred site. The report to committee recommended refusal of the application.

20. The Area Development Committee carried out a site visit on 26 March 2004 when opportunity was taken to visit possible alternative sites for the facility within the village. Consideration of the application was resumed at the Area Development Committee. The local member acknowledged that there was a deep split in opinion within the village over the application. He moved that the application be approved. An amendment was moved that the application be refused. The amendment was carried by nine votes to five votes. On 29 April

2004, Mr C received a notice of Fife Council's decision notice refusing the application.

21. After seeking independent advice, the youth group decided to appeal the decision to refuse to Scottish Ministers.

22. In the interim, a local Development Trust (formed in 2002), actively distributed and displayed plans in the village in connection with a proposed development at Park B. These proposals were considered by the Council's West Fife Villages Locality meeting.

23. The appeal to the Scottish Ministers was dealt with by written submissions. The Inquiry Reporter carried out an accompanied inspection of the appeal site on 11 January 2005 and sent out his decision letter on 22 February 2005. This granted conditional planning approval to the proposals for the village green.

24. A copy of the decision notice on the appeal was sent to the new Chair of the Community Council. It was put on the agenda of the Community Council meeting on 7 March 2005 and was discussed. Mr C asked that, given that a decision had been made by the Scottish Executive, the Community Council support the group's proposals. They refused, stating they would not support the proposals and that the award of planning consent did not give the group the right to develop the land. Subsequently, on 8 March 2005, a leaflet was distributed to households in the village by the ex-Chair of the Community Council, who is a director of the Development Trust.

25. On 11 March 2005, at the request of the new Chair of the Community Council, the ex-Chair and the Secretary of the mothers and toddlers' group met with the Chief Executive of Fife Council to discuss the issue of skateboarding facilities in the village. The Chief Executive confirmed the outcome of that meeting in a letter of 30 March 2005 to the Chair. The letter was copied to relevant officers of the Council, a local councillor and Mr C. The Chief Executive referred to having received a 'large number of representations' opposing siting the skate park on the village green. The Chief Executive's letter confirmed what was discussed:

'I explained that the Council's responsibilities as Planning Authority (are)

quite separate from the Council's responsibilities as a land owner. The village green is within the Council's ownership and of course planning consent of itself does not give any entitlement to access to land owned by another party. I also explained that the (Group) would require to apply to the Council for a lease of ground on the village green and that request would require to be considered by the Policy and Resources Committee of the Council. I also indicated I would explain that background to (Mr C of the Group) who had also requested a meeting with me.

In the letters of objection which I have received it was suggested that a ballot should be undertaken by Fife Council to ascertain the views of the community in relation to the proposal to site the skateboard facility within the village green. I explained to you that since the Council was the 'land owner' it would be more appropriate for the Community Council if it so decided itself to undertake an exercise to ascertain the views of the community. It would be a matter for the Community Council to determine how best to ascertain the views of the local community – experience indicates that a postal ballot based on the register of electors would be an effective and well recognised way of establishing community opinion. It would of course also be a matter for the Community Council to determine the question or the questions to be asked on the ballot paper and also for the Community Council to determine the extent of the canvas of community opinion – for example, if the facility was to be used by communities outwith the village, it would be sensible to include them in any proposed postal ballot. I should add that whilst I do not think it would be appropriate for the Council to initiate the ballot for the reasons I have given, the Council would be happy to assist the Community Council in undertaking any such ballot since clearly it would be in the Council's interest to obtain a definitive community view about the proposal to locate a skateboard park on the village green.'

26. This letter was read out at the Community Council meeting on 4 April 2005. The complainant did not receive his copy until 7 April 2005, after he contacted a Fife Council officer who had been present at the meeting.

27. On 12 April 2005, Mr C wrote to the Chief Executive pointing out his late receipt of the letter and that the current Chair of the Community Council had not in fact been accompanied by two 'Community Council colleagues'. He also made the point that the 'representations' the Chief Executive had received came as a consequence of the distribution of leaflets. He considered that the situation had been 'manipulated and contrived by the three people whom the Chief Executive met and the groups they represent'. He was also aggrieved that the Chair of the Community Council had refused to display the Inquiry Reporter's decision letter on the community notice board. He also objected to Fife Council conceding to demands for a postal ballot and assisting the Community Council to carry out the ballot and determine the questions to be asked and the extent of the canvas of opinion, despite them being the main objectors. He stated that Fife Council's own Community Services had previously carried out a community consultation vote on 8 April 2003. Finally, Mr C complained about:

- (i) collusive practices with senior officers and the local community council to subvert the democratic process;
- (ii) manipulation of service guidelines and practice including breaching own procedures;
- (iii) failure to give proper information with respect to planning information;
- (iv) failure to implement Scottish Executive and UNICEF policies.

28. He claimed this had caused injustice in the form of:

- (i) prevarication and lack of direction from Fife Council, which had caused delay to the proposal, and his group had incurred costs;
- (ii) lack of impartiality on the part of Fife Council senior staff;
- (iii) lack of professionalism and objectivity on the part of the Council and Community Council, which had caused delay and division in the community; and

- (iv) the ex-Chair of the Community Council had long-standing relationships with senior officers and councillors and had manipulated the issue by misinformation and collusive practices.

Mr C expressed concern that the Chief Executive had not acceded to his request made on 28 February 2005 to meet with him.

29. The Chief Executive met with Mr C on 21 April 2005. Mr C wrote to him the following day objecting to the Chief Executive's mind having been made up in relation to the postal ballot proceeding when the community consultation had taken place two years previously. He also expressed concern at the Chief Executive's support for the Community Council's proposals for Park B which he considered less safe.

30. In his response to Mr C's further letter of 22 April 2005, the Chief Executive confirmed that he had met with the Chair of the Community Council on 22 March 2005. He reiterated the apology he had given at his meeting with Mr C on 21 April 2005 regarding his erroneous reference to 'two Community Council colleagues'.

31. Mr C's letter of complaint to the Scottish Public Services Ombudsman was sent on 24 April 2005 and received on 27 April 2005.

32. An extra-ordinary meeting of the Community Council took place on 28 April 2005 to discuss the formulation of questions for the proposed ballot. According to the complainant, the final version was ratified and agreed at a full Community Council meeting on 2 May 2005. After a vote, the Community Council confirmed the content of the proposed ballot paper and agreed it should be sent to an officer in Law and Administration at Fife Council for him to organise the ballot for June 2005. Mr C wrote to the Ombudsman on 31 May 2005, stating that he believed the finalised questions had subsequently been amended at a meeting between the Chair and Vice-Chair of the Community Council with a senior Fife Council officer.

33. The amended ballot paper was discussed at a meeting of the Community Council on 6 June 2005. At that meeting, the complainant considered that the redrafted ballot paper nullified what had previously been discussed by the



Community Council on 28 April 2005 and agreed on 2 May 2005. He tendered his resignation from the Community Council at the meeting on 6 June 2005.

34. Ballot papers were distributed to registered electors on 15 June 2005 for return by 27 June 2005.

35. On 11 July 2005 a letter of enquiry was sent by the Ombudsman to Fife Council detailing four aspects of the complaint, namely:

- (i) the planning service initially misled the community about the need for express planning consent and thereafter changed their view by classifying the particular proposals to be a 'bad neighbour development' when not one of some fourteen other proposed skateboard facilities in Fife had been so designated;
- (ii) the Council, in deciding to refuse consent on 28 April 2004, failed to have proper regard to the initial consideration that the proposals were permitted development and the strength of support exemplified in the vote taken by their own Community Services on 8 April 2003;
- (iii) the Council did not act appropriately after the Scottish Executive Inquiry Reporter decided that conditional approval should be granted on appeal and subverted that decision as a result of representations made to the Chief Executive by three individuals from the community and by agreeing that Fife Council would assist the Community Council in organising a postal ballot;
- (iv) the Council interfered with the content and wording of the ballot and failed to implement previously agreed safeguards (such as two envelopes and numbering of ballot papers) to ensure the integrity of the vote.

### **The Council's response**

36. In his response of 24 August 2005, the Chief Executive stated:

'With regard to points (i) and (ii), I can confirm that in relation to the permitted

development status proposals, the advice offered by Development Services was based on an initial understanding that the development of the skateboard facility was to be pursued as a Fife Council project. As such, Class 30 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 extends permitted development rights to local authorities, and on this basis advice was offered that the proposals could be considered as permitted development. It should be stressed that such permitted development rights relate only to works by the Council, and such provisions have been enacted by the Council in relation to the other skate park facilities which have been developed across Fife. The application was, however, submitted by the Youth Group and, therefore, the permitted development rights extending to a local authority only, could not be attributed to the proposals by the Youth Group. The requirement for planning permission to be obtained did not, therefore, have anything to do with the status of the proposals as a bad neighbour development.

This clearly demonstrates that Development Services did not mislead the community in relation to the requirement for planning permission, and that this assertion is based on a misunderstanding by Mr C. In addition, the status of the development as a 'bad neighbour development' as defined under Schedule 2 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 was not the reason for planning permission being required. In relation to item (ii), the above comments clarify that the proposals were not permitted development and, therefore, there is no question of having failed to have proper regard to such a consideration. In addition, the strength of support for a development is, in itself, not a material consideration and an assessment of the merits of the proposal requires to be carried out.

With regard to points (iii) and (iv), a (senior Law and Administration Service officer), attended two meetings of the village Community Council (on 4 April and 6 June 2005) to offer advice and assistance from Fife Council with regard to the practicalities of implementing a postal ballot.

(The senior officer) gave general guidance at that meeting on the suggestion of a postal ballot, including an assurance that such an exercise would be

subject to appropriate safeguards. If, as it seems, he indicated that a means of achieving this would be the use of numbered ballot papers, his comments were intended as indicative only...

Following subsequent meetings of the Community Council on 28 April and 2 May 2005, (two officers from Law and Administration) met the Chair and the Vice Chair on 27 May to discuss the proposed ballot; to discuss and agree the role of Fife Council, the process for the ballot (including the wording of the ballot paper), the use of the electoral register and how the result would be determined and notified. Any agreement reached was subject to approval of the Community Council on 6 June 2005.

(The senior officer) attended the meeting of the Community Council on 6 June 2005 to assist on any issues arising from the draft agreement. Mr C was in attendance when that business was dealt with, although earlier in the meeting he had intimated his resignation from the Community Council. The agreement document was duly approved by the Community Council on 6 June 2005. The content and the wording of the ballot paper, therefore, were not finalised until then.

... the procedures adopted for the ballot were not as onerous as those adopted for, say, a Parliamentary election but (I have) no reason to doubt the integrity of the procedural aspects of the ballot.

... it was incorrect of Mr C to say I made a decision that it 'would be more appropriate for the Community Council to decide to undertake a postal ballot'....my letter of 30 March 2005, to the Chair of (the) Community Council, explained the Council's responsibilities as a planning authority were quite separate from the Council's responsibility as a landowner...I had responded to the suggestion of a ballot being undertaken by Fife Council as being inappropriate since the Council was the landowner and, therefore, it would be more appropriate for the Community Council – if it so decided – to undertake an exercise to ascertain the views of the community. That was solely and properly a matter for the Community Council to determine. The subsequent outcome of the postal ballot confirmed that at majority of the community (a) were not in favour of the location on the village green and (b) did not support

the provision of a skate board park in (the village).'

### **The complainant's comments**

37. The complainant was given the opportunity to comment on the Council's response. With regard to points (ii) and (iv), he reiterated that the proposals had originally been viewed as 'permitted development'; that the Council had regarded proposals for the village green as a 'bad neighbour development' and had stated they would assist only if the Youth Group agreed to an alternative site within the village. Mr C considered the Youth Group had been vindicated in pursuing their original proposals through a successful appeal to the Scottish Ministers.

38. Mr C stated that in his view the agreement over the ballot was not a 'draft' since it had been ratified by the Community Council at their meeting on 2 May 2005. He was aggrieved that the option of another site in the west of the village (not Park B) had been excluded from the ballot paper.

39. In responding to my proposed report, Mr C expressed his unhappiness that the efforts of his group which included young people and their supporters had been thwarted by what he described as an unholy alliance of persons with different reasons but with the same agenda namely to prevent the facility happening. He was particularly concerned that, while after the vote in June 2005 statements were made that facilities for young people in the village would be prioritised, nothing further had been heard from the Council.

### **Conclusions and recommendations**

40. I can readily understand Mr C's disappointment that the considerable efforts he has made to secure the provision of skate park facilities for the young people he represents have not after nearly three years borne fruit. He is also clearly aggrieved that after he had successfully appealed to the Scottish Ministers those opposed to his particular proposals suggested an alternative site and organised a public ballot which resulted in a majority of the community not only against the siting of the proposed skate park on the village green but also elsewhere in the village. In effect the proposal which had apparently attracted a majority in support in April 2003 was rejected in June 2005 by a majority of those balloted.

41. The Council's Chief Executive has correctly drawn a distinction between the Council's role as planning authority and the Council's responsibility for owning and managing recreational land.

42. In the circumstances of this complaint I consider that, if the Council as owners/managers were against the principle of the site being developed as a skate park, opposition should have been articulated prior to the group's appeal against the refusal of planning consent to the Scottish Ministers. Mr C could have been advised at the very least that the Council had not granted the necessary consent as land owner or manager of the village green. However, the omission was not in my view maladministration, since there is an onus on any applicant applying for planning permission to develop land not in his or her ownership to check beforehand that he or she will later be able to implement that permission.

43. In a situation where the community have now apparently indicated by a majority that they do not want a skate park facility in their village, it is inappropriate to recommend that the Council now actively promote such a facility themselves. Notwithstanding the complaint not being upheld, the Ombudsman recommends that the Council might wish to carry out a review of safe play and recreational facilities for young people in the village and in neighbouring communities as a matter of urgency.

25 April 2006