

Scottish Parliament Region: Mid Scotland and Fife

Case 200500642: Stirling Council

Summary of Investigation

Category

Local government: Housing; Policy

Overview

A complaint was made on behalf of a number of council tenants that the Council had changed their housing allocation policy without proper consultation.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the allocation policy was changed without proper consultation (*not upheld*);
and
- (b) a decision to consider a regeneration report as an 'exempt' item was unfair and unjustified (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendation to make.

Main Investigation Report

Introduction

1. The Ombudsman received a complaint from a man (referred to in this report as Mr C), on behalf of a group of Council tenants, against Stirling Council (the Council). The complaint concerned the Council's handling of the Regeneration Plan for an area of Stirling (referred to in this report as Area X), in particular, the authority's decision to change their housing allocation policy without proper consultation with the community. Mr C claimed that the housing prospects of the Council tenants whom he represented were adversely affected by such change. Mr C also complained that the Council's decision to consider the regeneration report as an 'exempt' item, excluding the public and press, was unreasonable.

2. The complaints from Mr C which I have investigated are:

- (a) that the allocation policy was changed without proper consultation; and
- (b) that a decision to consider a regeneration report as an 'exempt' item was unfair and unjustified.

Investigation

3. My investigation included an examination of reports on the regeneration of Area X which were submitted to the Council and the Council's Community Services Committee, the Area X Regeneration map and correspondence and email exchanges between Mr C and the Council. A written enquiry was made of the Council, whose Director of Corporate Services provided a background report and supporting documentation.

4. 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.

(a) The allocation policy was changed without proper consultation

5. In commenting to me on the background to the complaint, the Council's Director of Corporate Services explained that, following admission to the Community Ownership Programme, the Scottish Executive awarded the Council a total of £15 million Regeneration Funding over the period 2004 - 2008.

6. The funding was designed to kick-start housing regeneration in Area X, where it was widely acknowledged that poor quality and low-demand housing stock, in addition to social exclusion, required to be addressed. There was a need to pursue selective demolition of certain blocks of flats and to replace these with modern, mixed tenure housing. In order to progress what was a radical redevelopment programme, decisions were required in terms of vacancy management, capital investment and partnership working. This included detailed proposals for rehousing residents who were displaced as part of the regeneration exercise.

7. The Council were aware that the key to the success of the regeneration project was the need to take account of the views and needs of the local community and, to that end, the authority had arranged to carry out detailed community consultation to enable them to develop the master-plan for the area and to map out the regeneration plan in detail.

8. The Director acknowledged that some of the tenants who had complained through Mr C could potentially be affected by the changes in the Housing Allocation Policy because priority for rehousing would be awarded to those residents whose homes were scheduled for demolition (and those properties would not be available to applicants on the housing waiting list).

9. In the Council's formal response to Mr C (21 March 2005), the Corporate Complaints Officer (Officer 1) quoted the relevant legislation (see Annex 2). With regard to the question of whether there was a need for consultation with the local community on the implications of the Regeneration Plan in relation to the housing element of the Plan he said:

'I have taken legal advice on this matter and the view expressed to me is that as the proposals on allocation contained in the paper 'Regenerating [Area X]' considered by Stirling Council at its meeting on 16 December 2004 relate to a specific project the Council was not obliged to carry out consultation in terms of S54 of the Housing (Scotland) Act 2001. I am guided by that legal view.

On the question of non-statutory consultation, I have raised the point in your e-mail to me of 24 February 2005 with [Officer 2] who was at the joint meeting with the [Area X] groups on 7 December 2004. He advises me that [Officer 3]

and [Officer 4] made presentations on the regeneration proposals and the implications of the allocation proposals for people on the Council housing list. I understand that there is no minute of that meeting.

I am not aware of other discussions with external organisations about the allocation proposals which were in the paper submitted to the Council on 16 December 2004.

The minute of the Council meeting of 16 December 2004 [approved at the Council meeting of Thursday 17 March 2005] says that the Council agreed:

'that households whose homes were identified for demolition in [Area X] regeneration be prioritised for all nominations to Registered Social Landlords in the Stirling Council area and for all vacancies arising within [Area X].'

I have been advised that any challenge to the decision on the basis of an alleged failure to comply with S54 of the Housing (Scotland) Act 2001 would have to be via a request to the Court for a Judicial Review.

In your e-mail of 21 February 2005 you asked if it is a fact that the blocks of housing in the paper considered by the Council on 16 December 2004 are coming down, or is it a proposal?

The minute of the Council meeting of 16 December 2004, (approved by the Council meeting on Thursday 17 March) says that the Council agreed ... '2. to earmark those addresses identified in [Area X] as listed in Appendix 2b to the submitted report for potential demolition and redevelopment, subject to consultation with the community and partners and to the master-planning process', and also, '13. to the principles of consulting and involving key stakeholders, including tenants and community representatives, specifically [Area X] Opportunities Programme and [Area X] Action Planning Partnership'.

10. I have verified that discussions were held with the Council's legal service on this matter.

(a) Conclusion

11. I am satisfied that the Council properly explained their position on the matter of statutory consultation to Mr C. The authority wrote to him in some detail and indicated their decision was based on the provisions of the Housing (Scotland) Act 2001.

12. Mr C disagrees with their interpretation. However, the decision of the Council to proceed on the basis of properly obtained legal advice cannot be criticised.

13. I am also satisfied that the Council is committed to consultation on the details of their proposals. My investigation showed that, in administrative and service terms, the Council acted properly, in accordance with their proposal to regenerate Area X. In the absence of any evidence of fault or failure on their part in dealing with Mr C's formal representations, there was no basis to uphold his complaint.

(b) A decision to consider a regeneration report as an 'exempt' item was unfair and unjustified

14. On the matter of the use of the exemption, Officer 1 wrote to Mr C as follows: 'You feel that it was not appropriate for the paper 'Regenerating [Area X]' which was item E27 on the agenda for the meeting of Stirling Council held on 16 December 2004 to have been taken as an exempt item using Paragraph 2 of Schedule 7A of the Local Government (Scotland) Act 1973. You feel that this exemption was misused in this case.'

Paragraph 2 of the Schedule 7A of the Local Government (Scotland) Act 1973 refers to 'Information relating to any particular occupier or former occupier of, or any applicant for, accommodation provided by or at the expense of the authority'. I have been advised that a paper which is taken as exempt under Paragraph 2 does not need to contain the names of individuals – it is sufficient for there to be information in the relevant paper which enables individuals to be identified.

The paper 'Regenerating [Area X]' which was submitted to the meeting of Stirling Council on 16 December 2004 contained information which would enable individuals to be identified.

For the reasons set out in [Officer 5]'s letter to you of 17 February 2005, officers felt that the paper should be exempt using Paragraph 2 and it was put on the agenda with an 'E' prefix identifying that it was not for publication and that it was anticipated (though not certain) that the meeting would resolve to exclude the press and public during consideration of the item.

The decision on whether or not a paper is taken as an exempt item during a meeting of the Council must be taken by specific resolution at the meeting at which the paper is to be considered.

At its meeting on 16 December 2004 Stirling Council resolved that the public be excluded from the meeting for seven items of business which included the paper 'Regenerating [Area X]' – this paper was taken as exempt as it involved the disclosure of information as defined in Paragraph 2.

I have been advised that at a meeting of the Council a resolution to exclude the public for reasons of Schedule 7A of the Local Government (Scotland) Act 1973 is solely a matter for the Council. A resolution can be challenged at the time by a member of the Council who is present at the meeting. There is no other right of challenge.'

(b) Conclusions

15. I am satisfied that the Council properly explained their position on the matter of the exemption to Mr C and that their decision was made on the basis of legal advice. The authority wrote to him in some detail and indicated that their position was based on their interpretation of the provisions of the Local Government (Scotland) Act 1973.

16. Mr C has disagreed with the Council's interpretation of the legislative requirements. However, as the Council were acting on the basis of legal advice, their decision to make this report exempt is not one that can be criticised.

17. My investigation showed that, in administrative and service terms, the Council acted properly, in accordance with their proposal to regenerate Area X. In the absence of any evidence of fault or failure on their part in dealing with Mr C's

formal representations, there was no basis to uphold his complaint.

26 September 2006

Explanation of abbreviations used

Mr C	The complainant
The Council	Stirling Council
Area X	The area of Stirling to which the Regeneration Plan referred
Officer 1	Council's Corporate Complaints Officer
Officer 2	Council's Tenant Services Manager
Officer 3	Council's Project Manager, Community Ownership
Officer 4	Council's Team Leader, Strategy and Development
Officer 5	Council's Director of Regeneration Services

List of legislation and policies considered

Housing (Scotland) Act 2001, S 54¹:

(1) A local authority landlord and a registered social landlord under a Scottish secure tenancy or a short Scottish secure tenancy must notify the tenant and every registered tenant organisation of: (a) any proposal to which subsection (2) applies; and (b) the likely effect of the proposal on the tenant, and must have regard to any representations made to it, within such reasonable period as is specified in the notice, by the tenant or any such organisation in relation to the proposal.

(2) This subsection applies to a proposal by the landlord concerning: (a) its policy in relation to housing management, repairs or maintenance, where the proposal, if implemented, is likely significantly to affect the tenant; (b) the standard of service in relation to housing management, repairs and maintenance which it intends to provide; (c) its tenant participation strategy under section 53; (d) a disposal which would result in a change of landlord or, if different, owner of the house which is the subject of the tenancy.

(3) This section is without prejudice to section 53.

Paragraph 2 of Schedule 7 of The Local Government (Scotland) Act 1973 classifies exempt information and includes: 'Information relating to any particular occupier or former occupier of, or any applicant for, accommodation provided by or at the expense of the authority'.

¹ The text of legislation is taken from the Council's letter dated 21 March 2005.