

## Scottish Parliament Region: Central Scotland

### Case 200604017: Falkirk Council

#### Summary of Investigation

##### **Category**

Local government: Housing; estates management

##### **Overview**

The complainant (Mr C), a tenant of Falkirk Council (the Council) with a lock-up garage on council land, raised a number of concerns regarding permissions given to owners of a house (Mr and Mrs D) to facilitate the building of a rear extension to their home.

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

The complaints which have been investigated are that:

- (a) the Council failed to consult with users of the lock-up garage site (the Site) with regard to permissions that they had given to facilitate construction work at Mr and Mrs D's house (*not upheld*);
- (b) the Council failed to expedite action after they had been informed that users of the Site were being obstructed and inconvenienced (*partially upheld*); and
- (c) officers of the Council gave misleading information to residents through the local councillor (*upheld*).

##### **Redress and recommendation**

The Ombudsman recommends that the Council look at the circumstances of the consent granted in this case with a view to ensuring that future consents anticipate that activities related to the siting of a skip on Council land are regulated and the consequences of non adherence with any conditions are stated.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) resides at 9 X Street in a town in the area of Falkirk Council (the Council). To the rear of his house is an open area (the Site) with vehicular access from X Street on which four garages and four lock-ups are situated. The Site has a common boundary with properties on Y Road (a main road). The complaint arises from development proposals of Mr and Mrs D, the owners of 6-8 Y Road. Their pedestrian access to the Site, where they rent a garage, is through the garden of a council tenancy at 10 Y Road.

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

- (a) the Council failed to consult with users of the Site with regard to permissions that they had given to facilitate construction work at Mr and Mrs D's house;
- (b) the Council failed to expedite action after they had been informed that users of the Site were being obstructed and inconvenienced; and
- (c) officers of the Council gave misleading information to residents through the local councillor.

### **Investigation**

3. The investigation is based on information provided by Mr C and by the Council in response to my specific enquiries. 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.

4. Mr and Mrs D sought planning permission from the Council in late 2006 for a rear extension to their home at 6-8 Y Road. Planning permission was granted by a planning officer under delegated powers on 20 December 2006. The Council received a letter from Mr and Mrs D dated 7 March 2007 seeking permission to locate, temporarily, a skip immediately in front of the garage they rented from the Council on the Site. This was to facilitate the rear extension works for which they had obtained planning consent. Their terraced home at 6-8 Y Road is situated on a main road close to a junction and it was not practical for the skip to be located at the front of their home. On the basis that the Site was located close to the rear of their home, that Mr and Mrs D rented a lock-up garage on the Site from the Council and, that in purchasing their house, they inherited a pedestrian right of access across an adjacent council house garden

to the Site, Housing and Social Work Services (Housing Services) wrote granting permission to Mr and Mrs D on 12 March 2007. In granting consent, the Council required the surrounding area to be kept clear of debris and that Mr and Mrs D ensure that access to all garages was not restricted.

5. At Mr and Mrs D's instruction, a portion of the rear boundary wall behind 10 Y Road was taken down and a skip was sited on the Site in front of the their garage. According to Mr C, a wooden ramp to the skip blocked Mr C's entrance to his garage. Mr C stated that he telephoned the local office on 12 March 2007 but was unsuccessful in speaking with the Neighbourhood Officer (Officer 1). He left a message for her with the receptionist. When she did not get back to him, Mr C contacted a local councillor (the local councillor) who made an enquiry on his behalf to Housing and Social Work Services both about the siting of the skip and about the dismantling of a portion of garden wall at the boundary of 10 Y Road and the Site.

6. Following the local councillor's enquiry on 14 March 2007, Officer 1 visited the Site and found a boundary wall which she adjudged to be owned by the owner-occupier, partially dismantled. Officer 1 said she spoke with the owner who assured her that the wall would be re-instated after all works had been completed. A response was issued to the local councillor by Officer 1 on 15 March 2007.

7. After discussing Officer 1's reply with Mr C, the local councillor emailed the Senior Neighbourhood Officer (Officer 2) seeking clarification of a) whether the wall which had been dismantled was partly in the Council's ownership, b) whether planning permission or building warrant was required, c) whether permission should have been sought to use the Site for access and for siting the skip, and d) whether residents using the Site should have been informed. The local councillor also queried to whom Officer 1 had spoken when she visited.

8. Officer 2 responded to the local councillor on 28 March 2007. She stated that the wall was owned by the owner-occupier and not by the Council. Because of the height of the wall, neither planning consent nor building warrant was required. Permission had been granted by the Council's Housing and Social Work Services for the skip to be sited in the Site subject to it not causing obstruction to other garage users and that no debris etc would be left lying around. Officer 2 stated that garage users did not require to be consulted.

Because of the terms of the Data Protection Act, she could not say which owner-occupier made the request.

9. The local councillor thereafter queried again with Officer 1 ownership of the boundary wall and the siting of the skip in further emails of 2 and 4 April 2007 respectively. Officer 2 responded to the local councillor informing him that the owner carrying out the works had been advised that the area should be kept clear at all times. On 4 April 2007, Officer 1 visited all but one of the residents who leased a garage or lock-up in the Site and advised them of the arrangement with Mr and Mrs D. She asked them to report any problems to Housing Services. A letter was sent to the other lessee who lived in another town. In responding to Officer 1 by letter of 4 April 2007 one of the users referred to a mess of rubble being swept up, the coming and going of men and material and that the entrance to the Site having been obstructed.

10. On 18 April 2007, the local councillor sent a further email in which he raised issues regarding building standards with Officer 2. Officer 2 responded on 19 April 2007 that the owner had sought and had been granted the appropriate permissions for alteration work.

11. On 26 April 2007 Officer 2, after researching the matter further, informed the local councillor that the boundary wall, taken down to facilitate Mr and Mrs D's building work, was in fact in the ownership of the Council. She confirmed that 'permission was given by Housing and Social Work Services for the wall to be partially dismantled and re-instated to its original condition once all works are complete'.

12. Mr C telephoned Housing Services on 3 May 2007 to complain that Mr and Mrs D's workmen had set light to a drum in the Site. This had blocked access and was causing smoke. Officer 2 visited shortly thereafter but on arrival found no sign of the drum or any workmen.

13. The local councillor established from the Council's Planning Services on 13 May 2007 that planning permission had been granted to Mr and Mrs D on 20 December 2006 (paragraph 4). On 22 May 2007, the local councillor called a meeting with Officer 2, her colleague, Mr C and another resident. At that meeting, Mr C produced photographs showing that there had been some obstruction of garages.

14. As a result of that meeting which was held on 25 May 2007, Mr and Mrs D were invited by letter to a meeting with Officer 2 on 1 June 2007. According to Officer 2, Mrs D, who attended the meeting with Officer 2 and Officer 1, did not give a satisfactory explanation regarding the obstruction of other users and Officer 2 decided to revoke the consent for siting the skip in the Site.

15. Following a further enquiry by the local councillor on 1 June 2007, Officer 2 informed him on 4 June 2007 that permission for the skip to be located on the Site had been revoked due to several complaints being made by lock-up users about blocking of their access. The local councillor was informed that the instruction issued to Mr and Mrs D was that the skip and all builders' vans should be removed from the Site on or before 8 June 2007. Additionally, all vehicles accessing the Site should not be allowed to block off access to any lock-up and should, therefore, be parked against the wall opposite the lock-ups.

16. The local councillor wrote again on behalf of Mr C regarding the Site being used as a builders' yard and with regard to possessions of the late tenant of 10 Y Road being strewn in the rear garden area.

17. On 5 June 2007, Mr C submitted a complaint to the Chief Executive. He complained that residents utilising their garages had been given no prior notice and had been put to considerable inconvenience and stress. Mr C requested an immediate investigation.

18. In the meantime, the local councillor raised the issue of further vehicles being on the Site in connection with the works. Officer 2 responded on 19 June 2007 to the local councillor informing him that Officer 1 would investigate the issue of parked vehicles and that Development Services would investigate repairs to the wall.

19. On 27 June 2007, the Chief Executive responded to Mr C. She stated that permission to dismantle the boundary wall had been given by Housing Services on 26 April 2007 on condition that it was re-instated to its original condition on completion of the works at 6-8 Y Road. Because of assurances given that there would be no obstruction from the siting of the skip, no consultation was considered necessary. The Chief Executive stated that Officer 1 had checked with occupants of the Site on 4 and 5 April and the majority of occupants of the Site had no objections to the siting of the skip. The skip had been taken from the Site by 11 June 2007. While there were no commercial vehicles parked in

the Site at that time, a further meeting was to be held by the local Housing Services staff with owners about the parking of commercial vehicles. This meeting, which was to have been held between Mr C, Officer 1 and the local councillor on 5 July 2007, was cancelled.

20. On 13 July 2007, Officer 2 wrote to Mr C informing him that his neighbour had been advised that no commercial vehicles should be parked within the Site, but that vehicles could be parked on the street if a current road tax disc is displayed. Mr C was offered the possibility of engaging in mediation and was asked to contact Officer 1 in that regard.

21. Mr C responded immediately to decline the offer. He stressed that he and others had been inconvenienced daily by the Site being used as a building site. In a further letter of 15 July 2007, he complained about deliveries to the Site.

**(a) The Council failed to consult with users of the Site with regard to permissions that they had given to facilitate construction work at Mr and Mrs D's house**

22. The Council informed me that the Site is in council ownership. Housing Services from time to time allow their lock-up and garage sites to be used both formally and informally for alternative purposes, for example, to alleviate problems to pedestrians and road users on narrow estate roads by allowing rear garden parking with access via such sites and temporary parking of caravans. Housing Services regard alleviating problems and sustaining tenancies to be a priority. In achieving this, they adopt a flexible approach and may permit council owned land to be used constructively to assist or alleviate local issues or pressures. The local Neighbourhood Manager stated that in acceding to the request by Mr and Mrs D, the Council aimed to make best use of its premises to facilitate local residents improving their house. This was not an issue on which the Council would normally consult. The decision to allow such sites to be used to alleviate local problems rests with the local Neighbourhood Manager. The Council would make stipulations with regard to rectification of damage to council property and that there must be no inconvenience to other garage users.

*(a) Conclusion*

23. Mr and Mrs D obtained the necessary planning and building warrant consents for their proposed works from the Council. There was no requirement for Mr C to be consulted on the applications for planning permission and building warrant. Permission to take down the boundary wall and remove gates

was a matter involving only the Council, their then tenant at 10 Y Road and Mr and Mrs D. It is for the Council to decide on an appropriate standard of reinstatement.

24. I do not consider that there was an obligation for Council to consult on the request made by Mr and Mrs D to site a skip on the Site. I consider it was reasonable for the Council to grant consent for the location of the skip conditional on Mr and Mrs D having regard to the convenience of other users of the Site. I detail below, however, that the terms of the consent could have been improved. Since I do not consider that in granting permission the Council failed in an obligation to consult with other users, I do not uphold this complaint.

**(b) The Council failed to expedite action after they had been informed that users of the Site were being obstructed and inconvenienced**

25. In submitting his complaint, Mr C provided a diary of events covering the period from 12 March to 13 July 2007. The diary records the delivery of materials for the construction works (ready mix concrete, girders, wood, slabs and roofing materials), the parking of tradesmen's vehicles on the Site during the day, and the occasional removal and replacement of the skip.

26. The Council provided me with a list of dates when the Site was visited by their officers including ad hoc spot checks. The Council's Director of Housing and Social Work Services informed me that she regarded Mr C's allegation as unfounded. She stated that actual substantiated complaints from Mr C were few and far between and that appropriate and timely action was taken where it was required. Housing Services eventually took action based on photographs supplied by Mr C at a meeting on 25 May 2007 of a vehicle parked in front of his garage, which was taken as evidence of obstruction and which, after a meeting with Mrs D, led to permission to remove the skip and to cease deliveries.

*(b) Conclusion*

27. It is difficult for me to ascertain at this point in time, whether Mr C was obstructed in using his garage in the three months between early March 2007 when the skip was placed in the Site and early June 2007 when it was removed after the Council withdrew permission. I accept that Mr C may on occasion have been inconvenienced by the presence of the skip close to his lock-up garage.

28. In Mr C's diary (paragraph 25), however, the problem presented by the skip is given less prominence than the record of deliveries and parking of vehicles associated with those undertaking the building works at Mr and Mrs D's house. It is clear that parking and deliveries took place and that Mr C may at times have been inconvenienced.

29. Mr and Mrs D's letter of request to site the skip and the Council's letter of consent (paragraph 4) made no mention of express consent for associated parking on the Site or for deliveries to the rear of 6-8 Y Road. At least one other user referred to this when approached by Officer 1 in early April 2007 (paragraph 9). I believe at that time, the opportunity should have been taken to clarify and extend conditional consent to those other activities but to remind Mr and Mrs D of the consequences if those activities were problematic for other users. Had that been done it would have been appropriate for the Council to have alerted users beforehand to the extent of the permission they had granted to Mr and Mrs D together with a Council contact number should problems arise. As it was, the catalyst to action appears to have been the photographic evidence of obstruction presented by Mr C at the meeting some seven weeks later on 25 May 2007.

30. I consider that the Council could have acted more firmly to clarify and communicate both to Mr and Mrs D and to Mr C whether, in addition to permission for the skip, conditional consent was also being granted for parking and deliveries related to the building works. I accept that there may have been times when Mr C was obstructed or inconvenienced, but I do not consider that there is clear evidence to suggest that the situation required an earlier withdrawal of the consent to site the skip. On balance, I partially uphold this complaint to the extent that officers did not take action to clarify their sanctioning of activities ancillary to the siting of the skip.

*(b) Recommendation*

31. The Ombudsman recommends that the Council look at the circumstances of the consent granted in this case with a view to ensuring that future consents anticipate that activities related to the siting of a skip on Council land are regulated and the consequences of non adherence with any conditions are stated.



**(c) Officers of the Council gave misleading information to residents through the local councillor**

32. The Neighbourhood Manager, in responding to my enquiry, acknowledged that through a genuine mistake, the local councillor was given incorrect information about the ownership of a stone dividing wall between the Site and the garden of the Council's house at 10 Y Road, dismantled by Mr and Mrs D to enable access for workmen and materials to 6-8 Y Road. While the wall in question was solely owned by the Council, the local councillor was twice advised that there was a shared responsibility for the wall between the Council and an owner-occupier, when this was not the case. The Council say that the mistake came about due to the location of the Site in relation to the areas of responsibility between neighbourhood officers. Officer 1 had responsibility for the Site, her colleague for the adjacent council house at 10 Y Road. Officer 1, when asked, wrongly assumed, due to the type of building, that 10 Y Road was in private rather than council ownership. The house was not occupied by their tenant at the time and the partial demolition of the wall did not require planning permission. The mistake was corrected by the local councillor on the basis of local knowledge.

33. The Council informed me that they recognise that the reason given for the error is not acceptable and that assumptions cannot be made when advice has been given. The officer was interviewed by her manager and an appropriate notice was issued to all local office staff regarding future conduct in such matters. The Neighbourhood Manager maintained that the misinformation in no way affected the manner in which the local office made its decision in the case and that Mr C suffered no hardship or injustice as a result of the misinformation given to the local councillor.

*(c) Conclusion*

34. The Council accept that the local councillor was misinformed. I am pleased to note that the Council recognised their error and have taken appropriate action to prevent a recurrence. The situation was regularised when the Council granted conditional retrospective consent as owners for the taking down of the wall between 10 Y Road and the Site. Re-instatement works for the benefit of the new tenant are a matter between them and Mr and Mrs D. While the local councillor is entitled to expect that responses to his enquiries on behalf of his constituents are both reliable and accurate, I accept that the error was not deliberate and was corrected by officers soon after it was brought to their attention. I regard the principle of reliable and accurate communication as

extremely important. While I uphold the complaint, I must record that I do not consider that it had any significant practical consequence for Mr C.

35. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

**Explanation of abbreviations used**

Mr C	The complainant, who resides at 9 X Street
X Street	The street where Mr C resides
The Council	Falkirk Council
The Site	A council owned lock-up garage site behind X Street and Y Road with four lock-ups and four garages
Mr and Mrs D	The owners of 6-8 Y Road
Y Road	The road where Mr and Mrs D reside
10 Y Road	A neighbouring council tenancy over whose rear garden Mr and Mrs D had pedestrian rights of access to their garage in the Site
Housing Services	The Council's department of Housing and Social work Services
The local councillor	Mr C's local councillor
Officer 1	Neighbourhood Officer
Officer 2	Senior Neighbourhood Officer