

## Scottish Parliament Region: Central Scotland

### Case 200502468: North Lanarkshire Council

#### Summary of Investigation

##### **Category**

Local government (land and property)

##### **Overview**

The complainant (Mr C) raised a number of concerns about a fence which had been erected by North Lanarkshire Council (the Council) to the rear of his property.

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

The complaints which have been investigated are that:

- (a) the Council stated that the fence was necessary because of Mr C's family's anti-social behaviour despite the Police being unaware of any such issues. Furthermore, the decision to put up the fence was made as a result of a complaint by only one neighbour (*not upheld*);
- (b) Mr C was not consulted before the fence was put up (*not upheld*); and
- (c) the erection of the steel fence at the rear of Mr C's property causes a nuisance to him and his family (*not upheld*).

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

The Ombudsman has no recommendations to make.

## **Introduction**

1. On 31 January 2006, the Ombudsman received a complaint from a man (referred to in this report as Mr C) that North Lanarkshire Council (the Council) had erected a dangerous and unsightly steel fence to the rear of his home.

2. On 29 October 2004, Mr C was informed by the Council that instructions had been issued for the erection of secure fencing to the rear of his home. They stated that this action was to be taken due to problems in and around the rear of his property including consumption of alcohol by underage youths leading to damage and vandalism to the adjacent lockups and vehicles.

3. Mr C complained to the Council on 7 December 2004. The Housing and Property Services Area Manager (Officer 1) advised Mr C that the fence had reduced the number of complaints of youths loitering and causing nuisance within the area and that he, therefore, did not propose to remove it unless Mr C could give firm assurance on what measures he would take to prevent the recurrence of similar incidents.

4. On 15 June 2005, Mr C wrote to the Council to request that his complaint be escalated to the next stage of the procedure. He claimed that only one local resident had complained and that the Council's reaction was disproportionate. Mr C received a reply from the Director of Housing and Property Services (Officer 2) reiterating the reasons for the erection of the fence and stating that complaints had been received from various residents. He stated that the situation had been resolved by the erection of the fence. In this letter, Mr C is referred to the Ombudsman's office.

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

- (a) the Council stated that the fence was necessary because of Mr C's family's anti-social behaviour despite the Police being unaware of any such issues. Furthermore, the decision to put up the fence was made as a result of a complaint by only one neighbour;
- (b) Mr C was not consulted before the fence was put up; and
- (c) the erection of the steel fence at the rear of Mr C's property causes a nuisance to him and his family.

## **Investigation**

6. In the course of this investigation I have examined correspondence between Mr C and the Council as well as the Council's complaints file on the

matter. I have requested information from Strathclyde Police (the Police) and have also made written enquiries to the Council on the specific points of complaint.

7. I have set out, for each head of complaint, my findings of fact and conclusions. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Both Mr C and the Council have been given the opportunity to comment on a draft of this report.

**(a) The Council stated that the fence was necessary because of Mr C's family's anti-social behaviour despite the Police being unaware of any such issues. Furthermore, the decision to put up the fence was made as a result of a complaint by only one neighbour**

8. The Council have advised me that the fence was erected to prevent the continuation of a number of problems related to anti-social behaviour reported to Officer 2 and the Police during the period from 2001 to 2004. During this time, they received numerous and regular complaints, mainly through the Community Council, concerning the behaviour of youths in the area immediately around Mr C's property. The complaints related to the anti-social behaviour of a group of children and centred around noise, vandalism and intimidation of elderly residents. In addition, there were complaints regarding the use of a quad bike which had resulted in damage to the grass around the houses.

9. Mr C disputes that there were any problems to the rear of his property.

10. Following liaison with the Community Constable for the area (Constable 1) it was identified that the lock-up to the rear of Mr C's property was a main gathering area and allowed the youths to disperse through various gardens when the Police were in attendance. The fence is intended to stop through passage to the rear lock-up area so as to prevent the congregation of youths and potential vandalism. In addition it requires the quad bike, which belongs to Mr C's grandson, Mr X, to be returned to the house via the main road preventing disturbance to residents, and damage to the grassed area. The Council informed me that this has proved successful.

11. Mr C told me that one of his neighbours, Mr A, is a serial complainer and does not like children to play in the area behind the house. He maintained that the Council's decision to put up the fence was solely made on the basis of Mr A's complaints. Mr C also stated that he had spoken to Constable 1 who

had told him that there had been no complaints or reports of anti-social behaviour in the area.

12. The Council have supplied me with minutes of Community Council meetings, during which local residents voiced their concerns about anti-social behaviour in the area. This culminated in a meeting of the Community Council on 13 November 2001, attended by a number of Council staff and around 60 residents, as well as the Police. The discussion closed with the signing of a petition by residents to show their intense dissatisfaction with the way the anti-social behaviour problem was being handled. In March 2002, four different residents complained of vandalism, rowdy youths and the use of a quad bike in the area. Other minutes refer to disturbance, vandalism and fire raising.

13. Mr C has stated that he accepts that Mr X's presence was a catalyst for some, but not all of the problems in the neighbourhood.

14. The Council never stated that the fence had been erected as a result of Mr C's family's anti-social behaviour. They stated, in their letter dated 29 October 2004 to Mr C, that the fence was to be erected due to 'a number of reports of difficulties relating to the consumption of alcohol by underage youths in and around your premises, and that those involved have been responsible for damage and vandalism to the adjacent lock-ups and vehicles parked there'. The Council stated that there was regular communication with the Police on this issue.

15. Constable 1 has since been replaced by a new Community Constable, Constable 2. Constable 2 has held the role of Community Officer for the area for a year and a half. He stated that there have been numerous incidents in the area in relation to youths causing a disturbance, drinking in the street, gang fights and other anti-social behaviour. He stated that on attending several of these incidents, residents have indicated that these youths had come from or made their way through the rear gardens at or near to the fence. Constable 2 is also aware of youths using the lock-ups near the fence to smoke cannabis – evidence of this fact has been found at this location. He has additionally observed youths making off from the Police using the gardens near the fence as an escape route. Residents have expressed their support for the fence to Constable 2 and have indicated that the volume of youths coming and going from the gardens has reduced dramatically. This has reduced the number of incidents and has improved residents' quality of life. Based on his experience

and his communication with residents, it is Constable 2's opinion that the fence has been successful in reducing anti-social behaviour in the area.

*(a) Conclusion*

16. The Council stated that the fence was erected due to anti-social behaviour in the area in and around Mr C's premises. The Police have confirmed that they are aware of incidents and that the fence has reduced the number of problems arising in the area. The minutes from the Community Council show that a number of residents were concerned about the problems in the neighbourhood. The Council never stated that the fence was erected due to Mr C's family's anti-social behaviour. Accordingly, I do not uphold this part of the complaint.

**(b) Mr C was not consulted before the fence was put up**

17. The Council have informed me that, as a result of the Community Council meeting on 13 November 2001, a meeting was held between Mr C and Officer 1 on 23 November 2001 during which Mr C's grandson's (Mr X) behaviour was discussed. At the time Mr C was attempting to deal with the problems and was collaborating with Mr X's school. Mr C agreed to monitor Mr X. He also accepted that he had found Mr X and his friends drinking in his garage but not causing any disturbance.

18. Mr C states that the only time he was contacted was by letter and nobody was ever available to speak to him. Mr C has stated that Mr X suffers from a mental illness and that he accepts that his presence seemed to have been the catalyst for some but not all of the problems in the neighbourhood.

19. Despite the disputed meeting, the Council have informed me that complaints continued to merit regular Police activity and led to the consideration by the Council of the erection of a fence in order to close the route. As a result of a further report of damage and graffiti in October 2004, the decision was taken to erect the fence with work due for completion in early November.

20. The Council acknowledge that Mr C was not directly consulted in relation to the eventual erection of the fence. They stated that it was discussed but that Mr C suggested that he would police the gate to prevent any problems. The continued reports from the Community Council suggested that this was not done. Closing the gate still allowed the youths to climb over the wooden fence.

21. Officer 2 has advised that the youths' behaviour was the sole reason for

the erection of the fence and that the Council did not take this decision lightly. A considerable amount of time elapsed between the initial complaints and the actual erection of the fence. He stated that the Council was criticised by residents for this delay.

22. There is no requirement for the Council to consult with a householder about the erection of a fence unless there is mutual responsibility or shared ownership. Mr C does not have a legal right of access to the area in question. Officer 1 did send Mr C a letter dated 29 October 2004 advising him that the fence was to be erected, however, this did not reach him until after the fence had been constructed.

*(b) Conclusion*

23. Although Mr C was not consulted on the erection of the fence, I consider that he was aware of the problems being caused by the behaviour of the youths who congregated in the area. I accept that the Council had tried to resolve the situation by meeting with Mr C and giving him the opportunity to find a solution to Mr X's behaviour. As this was not successful, the Council had to take action for the sake of the other residents in the area. It is unfortunate that the letter sent by the Council to notify Mr C of their intention to construct the fence did not reach him until after the fence had been erected, however, it is not possible to determine whether the delay was attributable to the postal service or the Council.

24. Mr C was consulted in relation to finding a solution to the problem of youths congregating on his property. He was given ample time to find a solution to the problem. The erection of the fence was a reasonable step for the Council at this stage and they were not required to consult with Mr C on this matter as he had no legal right of access to the area in question. I, therefore, do not uphold this complaint.

**(c) The erection of the steel fence at the rear of Mr C's property causes a nuisance to him and his family**

25. The steel fence was erected to prevent access between two roads via Mr C's garden as described in paragraph 10. Mr C's younger grandson, Mr Y, uses the gate at the rear of the property as a shortcut to access a footpath as a route to school. Because of the fence, Mr Y is forced to walk along a busy road.

26. The Council have informed me that there are no footpaths to the gateway which Mr C has established and that they do not consider the shortcut to be an official route for pedestrians. Mr C does not use the gate for any reason other than to access the footpath. Whilst the Council have acknowledged that off street parking and traffic on the road is an issue they do not consider that this warrants the use of the shortcut. Furthermore, Mr C has no legal right of access to the area in question.

*(c) Conclusion*

27. The shortcut through Mr C's back garden is not a recognised route. Although it is unfortunate that Mr Y must now take a slightly longer and more traffic-congested route to school as a result of the fence, I do not consider this to be a disproportionate nuisance to Mr C and his family. I consider the Council's action to be a reasonable preventative measure in a situation where they have been required to balance the degree of nuisance caused to Mr C by the fence and the nuisance caused to a number of other residents by the anti-social behaviour which the fence is preventing. I, therefore, do not uphold this complaint.

*Comment*

28. Mr C has informed me that his circumstances have recently changed significantly and that he is in contact with the Council on the subject of the fence. Officer 1 has confirmed that he has arranged a meeting with Mr C to discuss this but that the Council would have to be clear that circumstances had changed before they would take any decision to remove the fence. He stated that if the Council were of the view that the problems in the area had been resolved, they would be willing to re-consider the status of the fence and that in so doing, they would consult with the Police, relevant neighbours and Mr C. The Ombudsman is pleased to hear about these developments and encourages the Council to undertake a review as suggested by Officer 1.

27 March 2007

**Explanation of abbreviations used**

Mr C	The complainant
The Council	North Lanarkshire Council
Officer 1	Manager of Housing and Property Area Services for the Council
Officer 2	Director of Housing and Property Services for the Council
The Police	Strathclyde Police
Constable 1	Previous Community Constable
Mr X	Mr C's older grandson
Mr A	One of Mr C's neighbours
Constable 2	Current Community Constable
Mr Y	Mr C's younger grandson