

Case 200502683: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Land and property; Sales and leases of property including excambions

Overview

The complainant, Miss C, was unhappy that despite initially agreeing to sell to her some land next to her home which she said she had been gardening for some time, the City of Edinburgh Council (the Council) decided they would only sell her a reduced amount of land and required some of the landscaping to be undone.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) the decision of the Council to sell some but not all of the land to Miss C (*not upheld*); and
- (b) the decision of the Council to remove some of the gardening on the land retained by them (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) clarify their policy on 'piecemeal' sales; and
- (ii) clarify the maintenance arrangements for the land with Miss C.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. Miss C applied to buy land from the City of Edinburgh Council (the Council) in April 2005. The land was adjacent to her house and Miss C wished to use it as a front garden to allow her greater privacy. Initially she asked for permission for a one metre strip but in May 2005 she asked if she could purchase a wider area.

2. The Council agreed to Miss C's request but before this could proceed, a neighbour of Miss C (referred to in this report as Mrs B) complained to the Council that a communal grassed area had had shrubs and flowerbeds placed on it. Mrs B spoke to a neighbourhood manager on 22 July 2005 and wrote in more detail on 5 August 2005 saying she opposed any sale of communal land. On 9 August 2005 the Council wrote to both Miss C and Mrs B to say the sale was suspended.

3. After further correspondence, on 2 November 2005, the Council wrote again to both Miss C and Mrs B. Miss C was to be given the option to purchase the one metre strip. It was decided the larger area of ground would be turfing and retained in Council ownership.

4. Both Mrs B and Miss C complained again and on 23 December 2005 the Council sent two more letters confirming the decision of 2 November 2005. It also said that Miss C would be required to reinstate turf next to a path but that the Council did not insist on immediate reinstatement of the other planted areas. Miss C and Mrs B both complained separately to the Ombudsman.¹

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

- (a) the decision of the Council to sell some but not all of the land to Miss C; and
- (b) the decision of the Council to remove some of the gardening on the land retained by them.

¹ The report on Mrs B's complaint is report number 200503204.

Investigation

6. In investigating this report, I have reviewed relevant correspondence between Miss C, Mrs B and the Council, and internal Council documentation. I have seen photographs of the land in dispute.

7. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Miss C and the Council were given an opportunity to comment on a draft of this report.

(a) The decision of the Council to sell some but not all of the land to Miss C

8. Miss C purchased a property in 2002. This was an ex-Council house and had a rear garden. Between the side of Miss C's house and the wall of a neighbouring garden lay a boundary fence. To the front of the house was a further grassed area which extended to a communal path. On 8 April 2005 Miss C wrote to the Council asking if she could buy a one metre strip of land around her home which she said she already maintained. She enclosed a map (not to scale) which showed an area to the side and front of her house. Miss C labelled the patch of land between the one metre strip and the path - the drying green area. In line with their procedure for minor land transactions, a development officer (Officer 1) in the Council consulted with internal offices and the local Councillor. This raised no objections to the sale although the Councillor indicated there had been a previous dispute between neighbours about a path placed on a communal grassed area. A site visit was held. In May 2005 Miss C asked if she could also purchase the land as far as the path. A report approving the sale to Miss C was signed by the acting Head of Development on 22 June and by the Director of Housing on 1 July 2005.

9. On 6 July 2005 a neighbour, Mrs B, complained to a local housing officer (Officer 2) that, over the last four to six weeks a communal grassed area had had shrubs and flowerbeds placed on it. She also spoke to a neighbourhood manager (Officer 3) on 22 July 2005. An internal email dated 27 July 2005 said that Officer 1 had discussed this with Officer 2 and it now appeared this could be a common drying green which could not be sold. The email also said that the site visit and photographs had shown no evidence of clothes poles and House Sales had not indicated it was a common drying area. On 9 August 2005 the Council wrote to Miss C to say the sale was suspended. On 12 August 2005 Miss C wrote complaining against the decision not to sell.

10. On 2 November 2005 Miss C received a letter from the Council which said that they had decided Miss C could purchase a one metre strip to the front and side of her property to accord her some privacy. It was decided the larger area of ground would be retained in Council ownership. The letter also said there was a plan to offer all owners in the area the opportunity to purchase land in the area still owned by the Council and that, ultimately, no ground would be retained by the Council. They said they did not have the staff to organise this at present and would not go ahead with 'piecemeal sales' as this could lead to problems with access and maintenance and disadvantage owners and residents who had not been given the opportunity to purchase land.

11. Miss C wrote to the Council on 5 November 2005. She complained about their decision not to sell the larger area. She said if the plan was to sell at a later date she would have to go through the application process again. She pointed out that others in the same housing scheme had bought similar land and provided copies of schedules to prove this. On 23 December 2005 the Council confirmed the decision of 2 November 2005 was upheld.

(a) Conclusion

12. The Council have chosen to compromise in coming to a decision not to sell the land. I do not dispute their right to do so and, in the circumstances, it would be hard to dispute their reasoning. However, I have noted that Officer 1 did not seek views again in the light of Miss C's request to purchase a larger area and, although the email of 27 July 2005 shows Officer 1 was aware there would be difficulties if a drying green was sold to Miss C the land was clearly labelled such in her initial plan. It is also clear that the Councillor's brief reference to a previous dispute in the area was a warning sign.

13. Additionally, while it is again hard to disagree with the decision of the Council that 'piecemeal sales' should not go ahead, no reference to this policy was made in the initial report and it is not clear whether this policy is being enforced throughout the area or only where there has been a dispute. Therefore, while I am not upholding this complaint I make the following recommendation.

(a) Recommendation

14. The Ombudsman recommends that the Council clarify their policy on 'piecemeal' sales.

(b) The decision of the Council to remove some of the gardening on the land retained by them

15. On 28 June 2005 Mrs B complained that removal of turf had led to the communal path being undermined. This was inspected on 29 June 2005 and a local housing officer said that this path was found to be dangerous and Miss C told not to do any more work on this. Miss C told the officer she had applied to purchase the land.

16. The officer returned to the area on 6 July 2005 to review the work required. Mrs B complained to him in more detail and said that the communal grassed area in front of Miss C's house had had shrubs and flowerbeds placed on it. When, on 9 August 2005 the Council wrote to Miss C to say the sale was suspended, Miss C was given the option of reinstating the ground, after which it would be maintained by the Council, or of leaving it as it was and taking over the responsibility for maintaining it. On 12 August 2005 Miss C wrote saying she chose to look after the ground herself.

17. The Council had communicated this to Mrs B who submitted a petition protesting against this. As a result, the Council's letter of 2 November 2005 confirmed that the Council had decided the turf should be reinstated and this ground be maintained by the Council (see paragraph 10). Miss C was given the option to pay the Council to do this or to do this herself.

18. Miss C wrote to the Council on 5 November 2005. She said she had been given verbal permission to garden the area shortly after purchasing her house in 2002 and objected to the returfing.

19. The letter of 23 December 2005 (paragraph 11) confirmed that Miss C would be required to reinstate turf next to a path. However, it said that the Council did not insist on immediate reinstatement of the other planted areas, although this may be reviewed if it caused problems with maintenance. At a meeting on 12 January 2006 attended by Miss C and a local Councillor (Mrs B chose not to attend this meeting), it was confirmed to Miss C that she could continue to garden those areas which she had planted in the common ground but must ensure this did not affect maintenance. It was also agreed the Council would reinstate the turf next to the path.

20. In her response to a draft of this report, Miss C said she considered that the cause of the damage to the path had been the use of heavy grass cutting

machinery by the Council. The Council carried out the returfing and some repairs to the path in early 2006. This work was carried out at the Council's expense.

(b) Conclusion

21. From the description of events in paragraphs 15 to 19, it is clear that the Council have changed their minds about whether or not to have the whole area returfed. This has though been in response to particular complaints and I do not find this unreasonable. The area they returfed was because the path was dangerous.

22. Having seen pictures of the area, the gardening would appear to add to the amenity of the area and there is nothing to prevent the Council allowing Miss C to maintain the planting. It is not though clear that they have always fully explained matters to Miss C and there appears to still be some confusion about who is responsible for the land. Therefore, while I do not uphold this aspect of the complaint, the Ombudsman makes the following recommendation.

(b) Recommendation

23. That the Council clarify the maintenance arrangements for the land with Miss C.

24. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

23 May 2007

Explanation of abbreviations used

Miss C	The complainant who sought to buy the land
Mrs B	A neighbour of Miss C's who objected to the sale of the land
The Council	City of Edinburgh Council
Officer 1	The development officer responsible for minor land transactions
Officer 2	A local housing officer
Officer 3	A neighbourhood manager