

## Scottish Parliament Region: Central Scotland

### Case 200601380: North Lanarkshire Council

#### Summary of Investigation

##### **Category**

Local government: Housing; Tenancy rights and conditions

##### **Overview**

The complainant (Mrs C) raised concerns about the allocation of land between her tenancy and that of her adjacent neighbours (Mr and Mrs Z) who had purchased their council house in 1992 and at the erection of a fence by the Council in early 2006 which, she stated, had created difficulties for her in presenting her domestic refuse bin for uplift.

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

The complaints which have been investigated are that:

- (a) neither the Council nor their predecessor informed Mrs C or her ex-husband of the land conveyed in 1992 to Mr and Mrs Z (*not upheld*);
- (b) the Council did not inform Mrs C beforehand that they intended to erect a fence at the gable of her home (*no finding*);
- (c) the Council's Area Housing Manager failed to keep an undertaking to get back to Mrs C after consulting with the Council's Cartographic Services (*upheld*); and
- (d) the Council had not responded to the concern Mrs C had expressed about difficulties in presenting her domestic refuse for uplift (*no finding*).

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

The Ombudsman recommended that the Council issue an appropriate letter of apology to Mrs C for their failure to get back to her on (c).

The Council have accepted that recommendation.

## **Main Investigation Report**

### **Introduction**

#### *Legal Background*

1. In terms of section 64 (1) (a) of the Housing (Scotland) Act 1987, the legislation current in 1991, a council tenant applying to buy the home in which he or she resided was entitled to be conveyed the house with such conditions as were reasonable provided that the conditions should have the effect of ensuring that the tenant has as full enjoyment and use of the house as owner as he or she had had as tenant. Section 54 of the 1987 Act provided a right of appeal by summary application to the sheriff regarding a variation in the terms of a secure tenancy.

2. The complainant (Mrs C) has resided since 1988 in a semi-detached Council house at 13 X Street in a community in North Lanarkshire. The commencement of the tenancy of her neighbours (Mr and Mrs Z) of the adjacent semi-detached house at 11 X Street, predated Mrs C's residence. In 1991, Mr and Mrs Z applied to the former Motherwell District Council (the District Council) to buy their home and this was conveyed to them in 1992. Mrs C maintained that neither she nor her ex-husband was consulted on the allocation of land between the two gables by the District Council or by North Lanarkshire Council (the Council) when they succeeded the District Council at the reorganisation of local government on 1 April 1996. In early 2006 the Council erected a new fence at the gable creating problems for Mrs C in presenting her wheelie bin for the uplift of her domestic refuse.

3. The complaints from Mrs C which I have investigated are that:

- (a) neither the Council nor their predecessor informed Mrs C or her ex-husband of the land conveyed in 1992 to Mr and Mrs Z;
- (b) the Council did not inform Mrs C beforehand that they intended to erect a fence at the gable of her home;
- (c) the Council's Area Housing Manager failed to keep an undertaking to get back to Mrs C after consulting with the Council's Cartographic Services; and
- (d) the Council had not responded to the concern Mrs C had expressed about difficulties in presenting her domestic refuse for uplift.

4. The local authority when Mr and Mrs Z purchased their home was the District Council. At the reorganisation of local government on 1 April 1996 the

Council inherited the District Council's rights and obligations as housing authority.

### **Investigation**

5. This investigation is based on information provided by Mrs C and the Council's responses to enquiries I made of them. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

#### **(a) Neither the Council nor their predecessor informed Mrs C or her ex-husband of the land conveyed in 1992 to Mr and Mrs Z**

6. Mr and Mrs Z's tenancy of 11 X Street predated Mrs C's tenancy of 13 X Street which commenced on 2 May 1988. Mrs C informed me that she and her ex-husband were not given a plan of the garden area when they became tenants and she confirmed that there was no dividing fence between the gables of the two properties. She stated that she understood the original dividing line between the two properties was equidistant from both gables and, at the rear of the houses the fence between the two gardens follows an extension of that line. Between 1988 and Mr and Mrs Z's application to purchase their home, Mr and Mrs Z parked their car between the two gables. Mrs C stated that she had no car at the time but she allowed another neighbour to park his car in her rear garden taking access between the two gables. Mrs C stated that she and her ex-husband were made aware that Mr and Mrs Z had applied to buy their home since they received a letter from the District Council with a plan. Mrs C's ex-husband had returned the plan upon which he had marked in ink that he considered the dividing line between the two properties should be the median line between the gables.

7. The Council have supplied me with extant correspondence from the former District Council's files. Mr and Mrs Z made application to purchase their home in late 1991 with an entry date of 6 January 1992. On 2 December 1991, the Council's Legal Manager wrote to the Director of Housing stating that the tenant of 13 X Street insisted that he had used and enjoyed sufficient room for a driveway at the side of his house. He did not at that time own a car but wished to make sure that there was sufficient access at 13 X Street for a driveway. The Legal Manager enclosed a 1:1250 scale plan from the Council's surveyor showing the bulk of the land between the gables to be apportioned to Mr and Mrs Z. The Director of Housing was requested to have someone inspect the

subjects and speak to the tenant of 13 X Street in order that this issue might be resolved and the sale permitted to proceed. On 17 December 1991 the Area Housing Manager asked Building Control to provide a garden divide plan. Following a reminder of 4 February 1992 from the Legal Manager, the Assistant Housing Manager responded on 7 February 1992 that inspections had shown that 'the tenant of No 13 (sic) has enjoyed the driveway to the side of his property for a considerable period of time and the division between the two properties is well established. It is the Housing Department's opinion that the division remains as it stands ...'. The extant correspondence does not include any letter to Mr or Mrs C confirming the decision taken. The property at 11 X Street was conveyed to Mr and Mrs Z as indicated in the plan.

8. Mrs C informed me that no officer from the District Council visited her or her ex-husband at that time to confirm what had been decided. After 1992, Mr Z shut her area off preventing the other neighbour from parking his car in Mrs C's rear garden. Mr Z remains owner of 11 X Street.

*(a) Conclusion*

9. Clearly a dispute arose after Mr and Mrs C had been alerted to the proposed purchase by Mr and Mrs Z of their home. The decision taken by the District Council was that Mr and Mrs Z were entitled to the land that they had used and enjoyed. The correspondence is silent on whether Mrs C or her ex-husband was informed of the former District Council's decision on the matter. If they were not, then that obvious discourtesy was a failing. When Mr Z shut off Mrs C's area after 1992, it was open to her to have sought professional advice on the options available to her which could have included an appeal to the sheriff. I have not been provided with any evidence to suggest that Mrs C pursued the matter with the Council for nearly ten years after they came into existence. In the circumstances I do not uphold the complaint against the Council.

**(b) The Council did not inform Mrs C beforehand that they intended to erect a fence at the gable of her home**

10. Mrs C stated that the Council erected a fence between her home and Mr Z's property in early 2006 without prior consultation. She stated that the first she knew about the fence being replaced was when a Council maintenance officer appeared outside her house and informed her that he was measuring for a new fence and gate. When the fence was in process of being erected, Mr Z appeared and challenged the siting. The maintenance officer checked the

related drawing and confirmed to Mrs C during a telephone conversation later that day the extent of Mr Z's ownership.

11. The Council informed me that the fence was commissioned as part of an annual fencing programme. The need for a replacement fence had been identified prior to the release of the 2005/06 programme. The Council stated that Mrs C was present at discussions on site regarding the location of the fence and also to ensure the free passage of the wheelie bin along the path at the gable of her house. This had resulted in the fence intruding into the ground owned by Mr Z with his permission.

12. Mrs C complained to the Council on 6 May 2006 asking that they investigate the matter and restore her ground to her. Following a visit by a Senior Housing Officer and maintenance officer to the site, the Area Housing and Property Services Manager responded to Mrs C on 6 June 2006. He confirmed that the dividing fence had been erected in late January/early February and that no fence had been in place for some time prior to this. He stated that the fence had been sited on the same lines as the previous fence taking into account remaining markings and visual evidence of the previous fence. The Area Housing and Property Services Manager also confirmed that the driveway between Mrs C's property and that of her neighbour had been split correctly and in accordance with the sale plan for 11 X Street. Following a further letter of 23 June 2006 from Mrs C, she was informed by letter of 21 July 2006 from the Director of Housing and Property Services that the matter had been reviewed by him and that the fence was in its proper location but with a small discrepancy in her favour.

*(b) Conclusion*

13. There is a conflict of evidence between Mrs C and the Council as to whether she was consulted before the fence was erected in early 2006. I cannot resolve the differences in these accounts and make no finding on this complaint. As owners and Mrs C's landlord, however, the Council were entitled to replace the fence where they adjudged the legal boundary to be.

**(c) The Council's Area Housing Manager failed to keep an undertaking to get back to Mrs C after consulting with the Council's Cartographic Services**

14. In responding on 6 June 2006 to Mrs C's letter of complaint, the Area Housing and Property Services Manager expressed the opinion of his office that

the area between the gables of 11 and 13 X Street had been split correctly and in accordance with the plan of sale for 11 X Street. He stated, however, that he had asked the Senior Housing Officer to contact the Council's Cartographic Services to obtain a second opinion on the matter. On completion of that process he undertook that the findings would be discussed with Mrs C.

15. Mrs C was aggrieved that that subsequent discussion did not take place.

16. The Council's files record that the Section Manager, Cartographic and Mapping Services, was asked for his views and these were contained in an email from him of 29 June 2006. He confirmed that 11 X Street had been sold in 1992, long before local government reorganisation. He suspected that the surveyor at the time simply measured what was used and enjoyed by the two tenants. He confirmed that the legal boundary of 13 X Street concurred with the boundary as shown on photographs taken by Mrs C. He considered there was little the Council could do with the possible exception of acquiring land from the current owners of 11 X Street.

17. While that information was forwarded to the Senior Housing Officer on 20 July 2006, no specific mention was made of the views of Cartographic Services in the Director's reply of 21 July 2006 to Mrs C's letter of 23 June 2006.

*(c) Conclusion*

18. While Mrs C had escalated her complaint to the Director before allowing the Senior Housing Officer or Area Housing and Property Services Manager to get back to her following consultation with Cartographic Services, the undertaking should have been adhered to. I uphold this complaint.

*(c) Recommendation*

19. The Ombudsman recommended that the matter be resolved by an appropriate apology to Mrs C for not getting back to her to discuss the matter after the views of Cartographic Services had been obtained. The Council have informed me that they accept the recommendation and that they are willing to apologise.

**(d) The Council had not responded to the concern Mrs C had expressed about difficulties in presenting her domestic refuse for uplift**

20. The Council informed me that Mrs C had been present at discussions prior to the fence being erected and that she had raised with them the need to ensure the free passage of the wheelie bin along the path beside the gable of her house. To accommodate this, the fence had, with Mr Z's permission, intruded into ground owned by Mr Z. In response to my enquiries, the Council's Director of Administration informed me that the Director of Community Services had put in place arrangements for the refuse collection operatives to take Mrs C's wheelie bin to and from the refuse collection vehicle.

*(d) Conclusion*

21. In light of my inability to adjudicate regarding the conflicting accounts at paragraph 13, I make no finding on this complaint. I note the arrangements which have been made for the collection of Mrs C's refuse.

18 July 2007

**Explanation of abbreviations used**

Mrs C	The complainant
The District Council	Motherwell District Council
The Council	North Lanarkshire Council
Mr and Mrs Z	Mrs C's neighbours
11 X Street	Mr and Mrs Z's home
13 X Street	Mrs C's home