

Scottish Parliament Region: Highlands and Islands

Case 200502985: Comhairle nan Eilean Siar

Summary of Investigation

Category

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

Overview

Mr C complained about the sale of land owned by Comhairle nan Eilean Siar (the Council) and on which he had a loom shed (the Shed). Mr C considered there was no proper consultation surrounding the sale. He was also unhappy that he was not given the opportunity to purchase the land and was served with a notice to demolish the Shed. In addition, Mr C said that he had found it difficult to have his complaints considered by the Council.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the sale of the land was not carried out appropriately by the Council (*partially upheld*);
- (b) Mr C should not have been served with the notice to demolish the Shed (*not upheld*); and
- (c) Mr C's complaints were not handled adequately (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) apologise to Mr C for the fact that he was wrongly informed that a consultation had taken place and he had been excluded from this;
- (ii) review the Council's procedures about land sales with reference to notification and consultation;
- (iii) clarify in their guidance to staff on their complaints procedure that complainants need to be kept informed of the process and that formal complaints should always be dealt with through the complaints process; and
- (iv) apologise to Mr C for the poor handling of his complaint.

The Council have accepted the recommendations and will act on them

accordingly.

Main Investigation Report

Introduction

1. On 15 June 2005 the Sustainable Development Committee (the Committee) of Comhairle nan Eilean Siar (the Council) considered a report about a request made by a company (Company X) to purchase land owned by the Council. It was agreed that the land be put up for sale but that other offers be sought. The land had originally been sold to the Council in 1985 on the basis that it would continue to be used to accommodate local weavers. A number of loom sheds were on the site. Occupiers of the loom sheds had no formal lease and paid no rent. The land was advertised as available for sale or lease and Mr C, who had a loom shed (the Shed) on the land, put in an offer to purchase the land on which the Shed sat. This offer was formally rejected on the grounds that it was received after the advertised deadline. The Committee subsequently recommended the land be sold to Company X and the Council agreed to this on 15 December 2005. While this process was ongoing, Mr C received a notice on 6 September 2005 that the Shed was dangerous and needed to be secured.

2. The complaints from Mr C which I have investigated are that:
- (a) the sale of the land was not carried out appropriately by the Council;
 - (b) Mr C should not have been served with the notice to demolish the Shed; and
 - (c) Mr C's complaints were not handled adequately.

Investigation

3. In investigating this complaint, I reviewed correspondence between Mr C and the Council, had sight of the relevant Council reports and minutes, the appropriate section of the Council's contract regulations and photographs of the site.

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 sale of the land was not carried out appropriately by the Council

5. The land was purchased by the Council in 1985. By 2005, parts of the land had already been sold. Mr C had expressed concerns about these sales and had said he was interested in purchasing part of the land. In early 2005

Mr C said he had a telephone conversation about the Shed with a Council officer who asked his intentions. He said he was told nothing about what the Council intended at that time and asked to be kept informed. In response to a draft of this report, the Council said that the Council officer's recollection was that he had said to Mr C the Council were trying to make the best use of the land and when Mr C had said the Shed was not in use that he would have to give this up. In June 2005 a report was placed before the Committee which said Company X had approached them about a possible purchase. It said that of the 11 sheds originally on the site only one was being used for weaving, six had been removed and four were being used for storage. The report recommended that the site be offered for sale and they consider the offer from Company X in the context of other offers.

6. The land was advertised for sale or lease on 21 July 2005. On 22 July 2005 Mr C expressed an interest in purchasing the land by email and did so again on 3 August 2005. The Council acknowledged his interest on 3 August 2005 and said they would send him an information pack. On the same day a local councillor (Councillor 1) had a meeting on the site with a Council officer. This meeting was in response to concerns local residents had raised about the details of the land advertised for sale. As a result of this, it was decided some of the land belonged to the housing portfolio and the area of land for sale was reduced. It was noted that this could affect access to the land. On 8 August 2005 Mr C was sent a letter informing him that the site had been redrawn and there was now limited vehicle access. He was told if he wished to proceed with an application to purchase he should complete the enclosed property application form and submit a formal written offer for the land. He was told the deadline for applications was 31 August 2005.

7. On 2 September 2005 the Council received two letters from Mr C. One was a formal complaint (see paragraph 19) and the second contained a series of questions about the sale. In both letters Mr C queried the consultation process. In his letter of complaint he raised the question of the handling of previous sales and said that the Council had not responded to numerous attempts by him to purchase the land. In his enquiry letter, Mr C asked what area of land was for sale and whether the Shed was on it. He also asked about: the restrictions on vehicle access; why an option to lease had been withdrawn; why the Council asked for so much information in their application form; and recommended that, in the absence of consultations with residents prior to the decision to sell and to occupiers of the area at any stage, the process should be

halted. Mr C said that he was, however, prepared to offer £100 for the land on which the Shed stood.¹

8. The Council told Mr C in a letter dated 12 September 2005 that his application to purchase (see paragraph 7) did not meet the deadline but that they would respond to his queries. A letter of 13 September 2005 provided him with information under Freedom of Information legislation. This included a copy of a drawing of the area of land for sale which had been available to any prospective purchaser who requested further information. The letter also said that the decision to sell was made after consultation with residents and, in response to their concern about vehicle access, the decision had been made to restrict access and to retain some land in the ownership of the Council because of the need of access for neighbouring housing. The Council said they had no plans to remove loom sheds.

9. Mr C received a response to his complaints in a letter dated 23 September 2005 from the Council. This explained the reason behind the decision to sell and repeated the statement that consultation had occurred. Mr C was told he had not been consulted because the Shed had been derelict. He was informed that his letter of complaint would be included with the report put before the Committee.

10. The Committee considered the report on the proposed sale prepared by Council officers at their meeting of 7 December 2005. The report said two offers had been made within the time specified and recommended that the offer of Company X be accepted. The report also included details of all correspondence with Mr C and copies of his queries, complaint and offer to purchase. The Committee recommended the land be sold to Company X and this decision, along with the report which again included details of Mr C's concerns, was placed before the full Council on 15 December 2005. The Council approved the Committee decision.

11. The Council also provided me with copies of their regulations which applied to sales of land. These did not include any requirements relating to consultation but did state that such sales required to be publicly advertised.

¹ Mr C confirmed in his response to a draft of this report that the Council had originally purchased all the land for £100. The Council said the sale made to Company X was for an amount substantially larger than this.

They also said that the information sent to Mr C was sent to all persons who expressed an interest. Only one person requested further information about the land and received a photograph and a drawing which outlined the land for sale.

12. In response to my questions about the process of consultation referred to in letters to Mr C, the Council said the sale of land did not require a formal consultation. However, local residents had raised issues concerning the land and the loom sheds at residents' association meetings attended by Councillor 1. The Council said active weavers also made their views heard at these meetings. According to the Council, Councillor 1 communicated the views of residents and active weavers at the meeting of June 2005 when the decision to sell was made. Councillor 1 reported that residents were concerned about the state of the area and that they felt there was a possible health and safety risk.

(a) Conclusion

13. Once the decision to sell was made, this was publicly advertised in line with the Council's own procedures.² Mr C's concerns about the decision and his complaint about the process were correctly put before the Committee and the Council who made the decision to sell the land to Company X. It is not the role of the Ombudsman to review this decision.

14. However, I do have concerns that Mr C was informed a consultation was undertaken and even given reasons why he was excluded from this when none in fact occurred (see paragraph 12). What happened was that local residents raised issues concerning the land at a residents' meeting, which led to a meeting on site between Councillor 1 and a Council officer (see paragraphs 6 and 12). Also, although the procedures do not formally require that owners of property on Council land be notified of sales, Mr C clearly had an interest in the land and had been in contact with the Council previously about his concerns about land sales. The Council have said that the Shed was derelict and this was why he was not 'consulted' but they had contacted him early in 2005 to discuss his intentions for the future of the Shed. However, it is not clear what was discussed about the Council's intentions (see paragraph 5). In the circumstances, I consider that Mr C should have been formally notified of the intention to sell. Therefore, I partially uphold this complaint to the extent that, while the Council followed their procedures relating to the sale of ground, Mr C

² It is not clear why this was advertised for lease or sale, when the decision had been made to sell and Mr C's query on this point was not answered by the Council.

should have been formally notified of the intention to sell and was wrongly informed that a consultation had taken place. The Ombudsman is, therefore, making the following recommendations.

(a) Recommendation

15. The Ombudsman recommends that the Council:

- (i) apologise to Mr C for the fact that he was wrongly informed that a consultation had taken place and he had been excluded from this; and
- (ii) review the Council's procedures about land sales with reference to notification and consultation.

(b) Mr C should not have been served with the notice to demolish the Shed

16. A Dangerous Building notice dated 6 September 2005 was issued to Mr C informing him that the Shed required to be secured. The note said that the work should be started by 16 September 2005 and completed by 7 October 2005. A file note shows that the Council subsequently checked the site, found it to be satisfactory and took no further action.

17. In response to my questions the Council provided photographs of the site. They also confirmed that the dangerous nature of the building had been spotted by a Council officer during the meeting on 3 August 2005 (see paragraph 6). The Council said it had also been raised as an issue by the residents' association.

(b) Conclusion

18. Given that Mr C's complaint to the Council was being dealt with at the time, I understand why the timing of this notice caused him concern. However, I have found no evidence to suggest that the decision to issue the notice was anything other than appropriate and in response both to local concerns and the opinion of an officer who had visited the site. Mr C made the building secure and the site was later found to be satisfactory. I have noted the requirement under the notice was not to demolish the Shed but to secure the building against entry. In all the circumstances, I do not uphold this complaint.

(c) Mr C's complaints were not handled adequately

19. On 2 September 2005 a letter from Mr C directed to the Chief Executive and headed formal complaint was received by the Council. This letter detailed Mr C's concerns about the process and, in particular, the lack of consultation.

20. Mr C received a letter responding to this formal complaint on 23 September 2005 from the Department concerned with the sale (see paragraph 9)³. The letter explained the process that had been followed and said that the local councillor had consulted local residents and active weavers. It said Mr C was not consulted as the Shed had been derelict. Mr C was also given details of previous sales on part of the land.

21. On 31 January 2006 Mr C complained to the Ombudsman. He submitted documentation to support this and in April 2006 was informed that, as the response of 23 September 2005 was from the Department, the Council's complaint procedure allowed him to ask the Chief Executive to reconsider his complaint at an appeal level. He was advised to do so before pursuing his complaint with the Ombudsman. Mr C subsequently reported that he was having difficulty with this and there was discussion about this between the Ombudsman's office and the Council. The Council confirmed that Mr C's complaint had not been dealt with through the formal complaints procedure. They said that this was unusual but that they had considered Mr C was complaining about the decision itself and not about the provision of a service. As such, they had put his concerns before the Committee and the Council who were making the decision.

(c) Conclusion

22. The Council have explained why Mr C's complaint did not go through the formal complaint process (see paragraph 21). While their decision to pass on his concerns to those involved in making the actual decision was good practice, Mr C was not told that this meant his complaint was being dealt with in a non-standard manner. In addition, although his concerns had been put forward to the Committee and the Council, Mr C was also not told the outcome of this or that he could proceed to complain to the Ombudsman if he remained unhappy. I also consider that, while Mr C was complaining about the decision, he also raised issues about the service provided to him as a prospective purchaser of land and as the owner of the Shed which was on land owned by the Council. In conclusion, the decision to put his concerns before the decision-makers should

³ Mr C also received a letter dated 16 September 2005 which kept him informed of the progress of his complaint.

not have precluded the Council from dealing with Mr C as a complainant and, on this basis, I uphold this complaint.⁴

(c) Recommendations

23. The Ombudsman recommends that the Council:

- (i) clarify in their guidance to staff on their complaints procedure that complainants need to be kept informed of the process and that formal complaints should always be dealt with through the complaints process; and
- (ii) apologise to Mr C for the handling of his complaint.

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

22 August 2007

⁴ My concerns that he was wrongly informed a consultation had occurred when it had not are dealt with under heading (a).

Explanation of abbreviations used

Mr C	The complainant
The Council	Comhairle nan Eilean Siar
Company X	The company who purchased the land
The Shed	The loom shed owned by Mr C
The Committee	The Sustainable Development Committee
Councillor 1	A local councillor