

Scottish Parliament Region: South of Scotland

Case 200601721: Dumfries and Galloway Council

Summary of Investigation

Category

Local government: Private sector grants and loans

Overview

The complainant (Mr C) raised a number of concerns regarding the refusal of his application for a repairs grant, to Dumfries and Galloway Council (the Council), after the Council had fully spent their funding for discretionary repairs grants. Mr C stated that the Council had led him to believe that a discretionary repairs grant would be awarded, and that the Council had subsequently failed to honour this commitment.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council's refusal of Mr C's application for a repairs grant (*not upheld*);
and
- (b) the Council led Mr C to believe that a repairs grant would be awarded (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. Early in 2005 Mr C applied to Dumfries and Galloway Council (the Council) for a discretionary repairs grant for roofing repairs to his home. In March 2005 a Council official visited Mr C and issued a repairs grant application form to be completed by Mr C and returned to the Council. Mr C was advised that work should not commence until formal approval had been received from the Council. On 4 October 2005 Mr C returned the completed grant application form to the Council. It was processed on 10 October 2005 and then placed in a queue to be dealt with in date of receipt order. During November and December 2005, Mr C contacted the Council several times to request permission for the work to commence. The Council responded to these requests on 5 January 2006 by issuing a letter to Mr C advising him that they had no objections to Mr C commencing the required work before formal approval was granted. The letter also advised Mr C that 'the granting of this permission does not prejudice any decision the Council may take in connection with this matter in the future'. Mr C states that only when the work was completed and the builder paid, did he learn that the grants scheme had been suspended as the Council had run out of funding. He complained to the Council about the non payment of a grant and remained dissatisfied at the conclusion of the Council's complaints process.

2. The complaints from Mr C which I have investigated are that:
- (a) the Council's refusal of Mr C's application for a repairs grant; and
 - (b) the Council led Mr C to believe that a repairs grant would be awarded.

3. In the course of my investigation I have referred to the Housing (Scotland) Act 1987, (the Act) and I have examined correspondence between Mr C and the Council. I have also considered internal Council correspondence, and by examination of minutes, I have taken account of discussions at the Council's Planning and Environment Services Committee meetings.

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.

Investigation

5. On 2 March 2005 a Council Grants Officer (the Officer) assessed Mr C's property in response to a request for a repairs grant. The Officer issued a letter

by hand to Mr C. The letter stated 'Do not start work until you have received formal approval'. An application pack containing the grant application form together with other necessary forms and guidance was also issued to Mr C at that time.

6. Mr C told me that the Officer told him that he 'would have no problem', therefore, implying that he would receive a grant.

7. Mr C submitted the completed grant application form to the Council on 5 October 2005. He told me that the delay in submitting the application form arose because most of the builders in his area were very busy, and he was not able to obtain the required quotes until October.

8. The Council acknowledged receipt of the application form on the day of receipt and advised Mr C that, at that time, there was a delay in processing grant applications, which may result in his application not being approved immediately.

9. The Council completed preliminary checks on the grant application, and the grant calculation was processed on 10 October 2005. Mr C's application was then placed in a queue to be dealt with in order of date received.

10. Mr C told me that he contacted the Council several times during November and December 2005 to advise them that he had obtained finance to fund the non grant funded costs of the work, and had an approved contractor who was ready to start the work. He was, therefore, keen for the work to commence without further delay.

11. In response to these requests, on 5 January 2006, the Council issued a standard letter to Mr C advising him 'I have no objections to you commencing the works prior to formal approval being granted. The granting of this permission does not prejudice any decision the Council may take in connection with this matter in the future'.

12. It was only after the work had been completed and paid for that Mr C was informed by the Council that a grant would not be awarded as there was no funding available.

13. Mr C believed that the letter of 5 January 2006 giving him permission to go

ahead with the repairs to his roof also implied that he would receive the appropriate level of grant. He told me that this letter, together with the alleged comments of the Officer that he 'would have no problem' led him into a false sense of security.

14. Mr C complained to the Council about their decision not to award a grant, and the fact that he believed the Council had made a commitment to award him a grant, which they subsequently failed to honour. He remained dissatisfied after the Council's investigation of his complaint and asked the Ombudsman to investigate the matter.

(a) The Council's refusal of Mr C's application for a repairs grant; and (b) The Council led Mr C to believe that a repairs grant would be awarded

15. Section 248(1) of the Act states 'where an application for a repairs grant is duly made a local authority ... (b) may approve the application in such circumstances as they think fit'. This allows the Council to exercise discretion in the way that they administer the scheme.

16. The Council is, however, restricted in the way that they may use discretion in certain situations. For example, section 240(1) of the Act states 'A local authority shall not approve an application for an improvement grant ... (b) if the improvement works specified in it have begun, unless they are satisfied that there were good reasons for beginning the works before the application was approved'.

17. Section 240(1) of the Act, therefore, provides that where works have begun without prior local authority approval, and the Council is not satisfied that there were good reasons for commencing the work, refusal of the grant application is mandatory.

18. It does not, however, provide that where the Council was satisfied that the work had commenced for good reasons that a grant award will automatically be made. In such cases the local authority will use their discretion as provided in Section 248(1)(b) of the Act.

19. This serves to ensure that applicants who begin work, albeit with good reason, are treated in the same way as applicants who do not start work until their grant application has been approved, and the grant awarded.

20. The letter issued from the Council to Mr C, by hand, on 2 March 2005, advised him not to start work until he had received formal approval. The letter further advised him 'In certain circumstances you may be allowed to start work, but you must speak to me or one of my colleagues before doing so'. This shows that the Council recognised that in certain cases it may be appropriate to commence the work for good reason, before the application was approved. It does not, however, suggest that in granting permission for work to start, that a grant award will automatically be approved.

21. Mr C advised me that when the letter was issued on 2 March 2005 he was told by the Officer that he 'would have no problem' in relation to his grant application. In their investigation of the complaint, the Council have addressed this issue by advising Mr C that the Officer disputed Mr C's account of the discussion. Mr C was advised in writing on 21 March 2006 that the Officer had confirmed that he 'did not give any verbal assurance that an offer of grant would be forthcoming'.

22. Mr C recognised that the Council may agree to him starting work before formal approval was received, he, therefore, contacted the Council on various occasions during November and December 2005 to seek this agreement. On 5 January 2006 the Council issued a standard letter to Mr C stating 'I have no objections to you commencing the works prior to formal approval being granted'. The letter also advised Mr C 'The granting of this permission does not prejudice any decision the Council may take in connection with this matter in the future'.

23. My examination of Council documents indicated that in late November 2005 the Council identified a potential problem with the grants scheme in relation to the number of applications already approved against the funding available. The Council's Internal Audit team was, therefore, asked to examine the scheme.

24. In January 2006 the Finance Sub Committee was advised that an over commitment against the Private Sector Housing Grants Service could result in a budget overspend of £1.6 M.

25. In an effort to secure additional grant funding, the Council contacted Communities Scotland, however, the additional funding required was not available.

26. In February 2006 the Planning and Environment Service Committee decided that, in view of the fact that the grant budget was fully spent, and there was no additional funding available, all undetermined discretionary grant applications would be refused. As Mr C's discretionary grant application had not yet been determined, his application was refused.

27. Following the decision by the Council not to award the grant, Mr C asked his Councillor to look into the matter for him. On 10 March 2006 the Councillor asked the Council why the letter of 5 January 2006 was issued to Mr C, when at that time, the Council knew that the grants budget was overspent.

28. The Council responded to the Councillor on 14 March 2006 advising him that 'these types of grants are classed as discretionary grants ... and approval is granted at the Council's discretion and within the limits of its budget'. The Councillor was also advised that it was not until a meeting of the Planning and Environmental Services Committee on 14 February 2006 that a decision was taken to refuse all discretionary grant applications, and that the decision had been widely published in the local media and newspapers.

(a) Conclusion

29. In considering the Council's decision to refuse Mr C's application for a repairs grant, I have taken account of the Act which makes it clear that a Council has discretion in the way they administer the scheme, together with the process followed to reach the decision.

30. I note that the grant application form, which was received by Mr C on 2 March 2005, was not submitted to the Council until October 2005, some 7 months later. Mr C's application form was received by the Council on 4 October 2005. By 10 October 2005 the application had been checked, calculated, and placed in a queue to be dealt with in order of date received. It is my view that the Council acted in a fair and reasonable manner in the way in which they processed Mr C's application.

31. I have also considered the action taken by the Council when they realised in November 2005 that there was a risk that the grant budget could be overspent.

32. Internal Audit were asked to examine the scheme, and, when it became apparent that additional funding would be required, contact was made with

Communities Scotland in an effort to secure this funding. Only when it was clear that there was no funding available for discretionary grant applications in February 2006, did the Council decide that all undetermined applications would be refused.

33. The action taken by the Council when it became clear that the grants budget was at risk of being overspent was reasonable.

34. It is unfortunate that when Mr C received the letter of 5 January 2006 he was not advised of concerns over the amount of grant funding available, however, I do not believe that this is a material factor for me to consider in deciding whether or not the Council's decision to refuse Mr C's application for a repairs grant was reasonable.

35. Taking these circumstances into account I have concluded that the Council's decision not to award a discretionary repair grant to Mr C complied with their legal requirements, and was reasonable. I do not, therefore, uphold this complaint.

(b) Conclusion

36. In considering Mr C's complaint that the Council led him to believe that a repair grant would be awarded, I have reviewed the evidence contained in documentation provided by Mr C and by the Council, and I have taken account of the statements made by Mr C.

37. Mr C stated that the Officer assured him that he 'would have no problem' in obtaining a discretionary grant. The Council, however, told me that the Officer 'did not give any verbal assurance that an offer of grant would be forthcoming'.

38. In the evidence supplied to me by both Mr C and the Council there is no formal record of the conversation that took place between the Officer and Mr C, neither is there any independent corroboration of the discussion. I, therefore, have no way of verifying what was actually discussed between the two parties.

39. Mr C has stated that he believes the letter issued by the Council on 5 January 2006 stating 'I have no objections to you commencing the works prior to formal approval being granted', implied that a grant award would be made.

40. The letter, however, also states in the second paragraph 'The granting of this permission does not prejudice any decision the Council may take in connection with this matter in the future'.

41. I have considered very carefully whether or not the letter of 5 January 2006 could imply that a grant would be awarded. In issuing this letter, the Council advised Mr C that he may commence work before formal approval was received. In doing so, the Council were advising Mr C that his application would not be disqualified under section 240(1)(b) of the Act which states that 'A local authority shall not approve an application for an improvement grant ... (b) if the improvement works specified in it have begun'.

42. The second paragraph of the letter, however, makes it clear that the granting of this permission does not prejudice any decision the Council may take in connection with this matter in the future. I am satisfied, therefore, that it is clear that a decision in connection with the matter had not yet been made, but would be made in the future.

43. Given that a decision had not been made, and the letter clearly states this, it would be unreasonable to assume that by giving permission for the work to commence before the decision was made implied that a grant would be awarded. Such a decision would, if made, be unfair to those other applicants who decided to wait for the grant to be awarded before commencing work.

44. The question I have asked myself, however, is that given the contents of the letter dated 2 March 2005, in which Mr C was advised not to start work until he had received formal approval, and the letter of 5 January 2006, in which he was advised that the granting of this permission (to commencing the works) did not prejudice any future decision made by the Council in relation to the grant application, was it reasonable to rely on an alleged informal conversation some ten months previously in assuming that a grant would definitely be awarded?

45. I consider that in light of the wording of these two letters it was unwise to assume that a grant would definitely be awarded.

46. Taking account of the evidence I have seen, I have concluded that the Council did not lead Mr C to believe that a repairs grant would be awarded. I do not, therefore, uphold this complaint.

19 September 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	Dumfries & Galloway Council
The Act	The Housing (Scotland) Act 1987
The Officer	A Council Grants Officer

List of legislation and policies considered

Housing (Scotland) Act 1987