

Scottish Parliament Region: West of Scotland

Case 200603161: Renfrewshire Council

Summary of Investigation

Category

Local government: Building control; Policy/administration

Overview

Mrs C complained to Renfrewshire Council (the Council) about the condition of a neighbouring property in January 2006. The Council issued a defective building notice (the Notice) on this property in February 2006. Mrs C was unhappy that the Council did not enforce the Notice when her neighbour did not undertake the work within the time specified. She also said that she had difficulty pursuing her complaint about this and she was also unhappy that the Council had not kept her informed of progress.

Specific complaints and conclusions

The complaints which have been investigated are that the Council did not:

- (a) enforce the Notice (*not upheld*);
- (b) inform Mrs C of their actions in relation to the Notice (*not upheld*); and
- (c) respond appropriately to Mrs C's concerns (*partially upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) arrange regular reviews of the effectiveness of their policy on issuing and enforcing defective building notices;
- (ii) consider whether they should provide more information to members of the public about such notices and, in particular, what is likely to happen when a notice is issued; and
- (iii) reinforce in their guidance to staff that they should ensure the Council respond as a whole organisation to complaints when issues raised affect more than one department.

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

Main Investigation Report

Introduction

1. The Building Standards Section (the Building Section) of Renfrewshire Council (the Council) had inspected the property (Property A) in 2002 and 2003, as a result of Mrs C's concerns. They said that it was not dangerous and could take no further action. On 1 May 2005 the Building (Scotland) Act 2003 (the Act) came into force. In January 2006 Mrs C contacted the Council again about Property A. Following inspection, a defective building notice (the Notice) was issued. This required the owner of Property A (Mrs D) to start work to repair the defects by 27 March 2006 and to complete this by 28 April 2006. This work was not done and Mrs C complained to the Council.

2. The Council informed Mrs C that the legislation gave them discretion as to whether or not they should enforce the Notice. They said they were in discussion with Mrs D and did not believe that enforcement action was required. Mrs C received her final response from the Council in February 2007 and subsequently complained to the Ombudsman's office.

3. The complaints from Mrs C which I have investigated are that the Council did not:

- (a) enforce the Notice;
- (b) inform Mrs C of their actions in relation to the Notice; and
- (c) respond appropriately to Mrs C's concerns.

Investigation

4. In investigating this complaint, I obtained background documentation and correspondence relating to the complaint. I made enquiries of the Council and also reviewed the Council's policies and relevant legislation.

5. 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.

Legislative background

6. The notes to the Act state that it is designed to set out a framework for a new building standards system in Scotland. Section 28 gives Councils the power to serve a notice on the owner of a building to rectify defects to bring the building into a reasonable state of repair. The example given is of a leaking

roof which risked damage to the structure of the building. Section 28 describes the information that must be included in such a notice and states that if the owner has not complied with the notice by the dates specified then an offence has been committed. The Act also requires Councils to set up a Building Standards Register and to place a copy of all such notices and any completion certificates relating to those notices in the register. Section 28 (12) states that a Council may at any time withdraw a defective building notice, waive or relax any requirement of such a notice including substituting a later date. The Act came into force on 1 May 2005.

7. In October 2004 the Scottish Building Standards Agency issued a procedural handbook relating to the Act. This has no legal status but was designed to 'aid the practical operation of the procedures'¹. The Council adopted the procedures in the handbook.

(a) The Council did not enforce the notice; (b) the Council did not inform Mrs C of their actions in relation to the Notice; and (c) the Council did not respond appropriately to Mrs C's concerns

8. Mrs C first raised her concerns about Property A in 2002/2003. At that time the Building Section took no action as Property A was not dangerous. Mrs C contacted the Environmental Services Department (the Environmental Department) in 2003 and was also advised they could take no action. She contacted the Environmental Department again in 2004 about water ingress. The Environmental Department contacted Mrs D, who said she would employ a plumber.

9. In January 2006 Mrs C complained to the Council again about the condition of Property A and the effect on her own home. The Building Section served the Notice on Mrs D on 24 February 2006. The Notice states that a roof was in poor condition and outlined action Mrs D must take and said that this was to prevent 'water ingress to Property A and dampness penetrating to neighbouring property'. The Notice said the work must be started by 27 March 2006 and completed by 28 April 2006. The Notice was placed on the

¹ A new procedural handbook was issued in May 2007. As this post-dates the complaint, I refer throughout to the 2004 version unless otherwise specified.

Council's Building Standards Register.²

10. On 18 October 2006 Mrs C wrote to the Building Section, asking why the Notice had not been enforced and outlining the difficulties the delay in making the repair was causing her. She said she had spoken to a Council officer (Officer 1) in the Building Section on a number of occasions about this. The Head of Planning replied on 24 October 2006. He confirmed that Officer 1 had been in discussion with Mrs D, who had said she intended to carry out the work. He said he would ask for an update. The Head of Planning also said that Section 28 of the Act gave them discretion and the Council took the view that they would only act to remedy the defects 'if deemed necessary to protect the public'. He said damage to Mrs C's property caused by the deterioration of Property A was not a matter the Council could comment on.

11. Mrs C contacted her MSP who raised her concerns with the Environmental Department. The Director of Environmental Services (the Director) wrote to the MSP on 8 December 2006 and set out the contact Mrs C had had with the Environmental Department. This said the last contact had been in February 2006 and linked to a blocked communal sewer. This had been resolved. The Director said the Department had no involvement with serving the Notice or any legislation they could use to force Mrs D to maintain her property. The Director also said that a member of staff had contacted the local building control office and been informed that this was being pursued. The MSP was advised to contact Officer 1 for further details. The MSP copied this letter to Mrs C with a copy of the Council's complaint form.

12. Mrs C's complaint was acknowledged on 29 December 2006. She was told that this would be investigated and she would receive a response by 22 January 2007. A letter of response was sent on 10 January 2007 by the Head of Planning.

13. The Head of Planning confirmed the information given in his previous letter of 24 October 2006. He explained further that a notice would be served if, after reasonable negotiation, the Council could not instigate remedial work. This allowed the Council to record the action and undertake a monitoring policy. If

² At the time of drafting of this report, although accessible to the public, this remained in hard copy. This did not comply with the regulations which said this should be available electronically. The Council confirmed they were currently working with a software supplier to do so. The Council also said they would update information on their website to make it clear that defective building notices could also be found on their Building Standards Register.

the defects deteriorated to the extent that there were public safety concerns, further action would be considered. Mrs C was advised that if she felt there were issues about liability for any damage to her property she should seek legal advice. Mrs C appealed this decision and her appeal form was received by the Council on 19 January 2007. On 9 February 2007 the Director of Planning upheld the previous decision. This completed the Council's complaints procedure.

14. In response to my enquiries, the Council said that they sympathised with Mrs C and were seeking to resolve the problem. They said the nature of the work that would be required to repair the defect would be intrusive and it would, therefore, be desirable if Mrs D could carry this out herself. This was in line with their standard practice on defective building notices. The Council said that such notices were only issued if informal steps to resolve the problem had failed. While such notices would be recorded and monitored, they would only be enforced if it was considered there would be a significant threat to public safety. They said that the majority of cases where a notice would be issued were as a result of insufficiently planned or routine maintenance to privately owned premises. Having issued a notice, they were happy to act as a monitoring agency.

15. I asked the Council to comment specifically on the fact that the statutory form of the Notice did indicate non-compliance would amount to a criminal offence. The Council accepted this but said that any decision to prosecute lay not with them but with the Procurator Fiscal. They considered the Act did give them a power to report matters to the Procurator Fiscal if they felt it was appropriate but the Act did not impose a duty on them to do so. They added that the only sanction in the legislation was a fine which might not progress matters and that they would take into account whether it was reasonable in terms of Council resources to pursue this course of action.

16. The Council said that, on a visit in January 2007, there had been evidence Mrs D was seeking to limit damage caused by water ingress and they had given her additional time. The Council also provided information about their contact with Mrs D³. This showed that the contact had been regular in 2007 and that they had had good reasons to believe that Mrs D was intending to carry out the

³ I have seen detailed notes of this contact which contains information which is personal to Mrs D and is not included here.

work. Contact in 2006 had been less regular but showed that the Notice had been followed up in July 2006 and Mrs D had contacted contractors and the estimate for the work she had obtained in late September 2006 was sent to the Council.

17. The Council said that Mrs C had been informed of progress at each telephone contact in 2006 but they had not kept records of this. They added that it was not standard practice to keep in touch with complainants once notices had been served and they would only have updated Mrs C if there had been a significant change to what she had previously been advised. During my investigation, the Council and Mrs C sent me a copy of a letter sent to her, dated 27 June 2007, informing her that the work should take place within four weeks. I was subsequently informed that Mrs D's builders had confirmed they would be on site by 28 August 2007.

(a) Conclusion

18. The Act provides Councils with new powers to intervene when a building is not dangerous but defective. In considering whether a Council have taken into account all relevant factors in deciding whether to exercise or not exercise these powers, it is important to take account both of their general policy and the application of this in the circumstances of each individual case. In responding to Mrs C's complaint, the Council have provided their view of this new legislation and their interpretation of their duties and responsibilities.⁴ They have explained that, in deciding whether to pursue a notice and take on the work themselves, they need to take into account that this may involve intrusive works on an individual's home. I understand their reluctance to do so, particularly when there is evidence that the homeowner is keen to undertake the work. Having seen the details of the contact with Mrs D, I am satisfied that the Council's belief that she fully intended to undertake the work herself was a reasonable one. Although it did take nearly 18 months from the issuing of the notice in this case until Mrs C was informed that work would begin shortly, the Notice did, ultimately, bring about the desired result. From the information provided in this case, I am satisfied that the Council did pursue this appropriately. I, therefore, do not uphold this complaint.

⁴ It should be noted that, ultimately, it is the role of the courts to provide definitive rulings on the interpretation, given by public bodies, of the law.

19. While the defective building notice procedures are still relatively new, the effectiveness of the Council's policy on their use and enforcement in general will only be known in time. Although I am not upholding any aspect of this complaint the Ombudsman is, therefore, recommending that the Council commit to undertaking a regular review.

(a) Recommendation

20. The Ombudsman recommends that the Council arrange regular reviews of the effectiveness of their policy on issuing and enforcing defective building notices.

(b) Conclusion

21. Mrs C and the Council have both said that she maintained contact with them to keep herself informed of progress. The Council have said they would not inform members of the public as a matter of course but would have advised Mrs C of any significant changes in the position and have done so.

22. Once a defective building notice has been issued, there is no requirement on the Council to keep owners of neighbouring property or member of the public who may have initially raised concerned informed. Mrs C did receive accurate information when she contacted them and was informed of significant changes.

23. However, it is clear that, having been informed that a defective building notice would be issued, this raised an expectation that work would occur quickly or that the Council would, as a matter of course, undertake the work themselves. As I have already said, this is a relatively new procedure and, while I am not upholding this complaint, the Ombudsman is making the following recommendation.

(b) Recommendation

24. The Ombudsman recommends that the Council consider whether they should provide more information to members of the public about such notices and, in particular, what is likely to happen when a notice is issued.

(c) Conclusion

25. The Council responded quickly both to Mrs C's initial completed complaint form and to her subsequent appeal. The answers clearly set out their response to her complaints.

26. However, I was concerned by the Council's response to the concerns raised by Mrs C's MSP on her behalf. This only dealt with her concerns from the view of the Environmental Services Department, when it should have been clear the position of the Building Section should have been reflected. I have seen the letter which refers in detail to Mrs C's concerns about the lack of action following the Notice. If the Director felt that she could not respond on this point, this should have been passed to them to provide a response, rather than passing this responsibility back to the complainant. Therefore, although I have no concerns about the response following the receipt of the complaint form, the initial response was not adequate and, given this, I partially uphold this complaint.

(c) Recommendation

27. The Ombudsman recommends that the Council reinforce in their guidance to staff that they should ensure the Council respond as a whole organisation to complaints when issues raised affect more than one department.

28. 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.

24 October 2007

Explanation of abbreviations used

Mrs C	The complainant
Mrs D	A neighbour of Mrs C
The Council	Renfrewshire Council
The Notice	The defective building notice issued on Mrs D's property
Officer 1	A council officer in the Department
The Director	The Council's Director of Environmental Services
The Act	The Building (Scotland) Act 2003
The Building Section	Building Standards Section
The Environmental Department	Environmental Services Department
Property A	The property in relation to which the Council served a defective buildings notice

List of legislation and policies considered

The Building (Scotland) Act 2003

Scottish Building Standards Agency Procedural Handbook, First Edition