

Case 200503556: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Roads and Transport; Complaints Handling

Overview

The complainant (Mr C) was concerned that The City of Edinburgh Council (the Council) had not dealt satisfactorily with his enquiries and complaints about the use of a piece of land opposite his garage.

Specific complaint and conclusion

The complaint which has been investigated is that the Council did not deal appropriately, or adequately, with Mr C's enquiries and complaints regarding the use of Council land opposite his garage (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) review their procedures and practice on the investigation of complaints of abandoned vehicles to ensure that any claims that vehicles have been parked with permission are appropriately verified; and
- (ii) apologise to Mr C for the maladministration he has been subject to.

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

Main Investigation Report

Introduction

1. On 21 March 2006 the Ombudsman received a complaint from a man, referred to in this report as Mr C. Mr C complained that The City of Edinburgh Council (the Council) had failed to take action regarding the parking of abandoned vehicles on a piece of land opposite his residential garage. The presence of these vehicles made it difficult for Mr C to manoeuvre his vehicle into, and out of, his garage. He explained that these problems had been ongoing since he had purchased his home, and the garage, in 1998.

1. The complaint from Mr C which I have investigated is that the Council did not deal appropriately, or adequately, with Mr C's enquiries and complaints regarding the use of Council land opposite his garage.

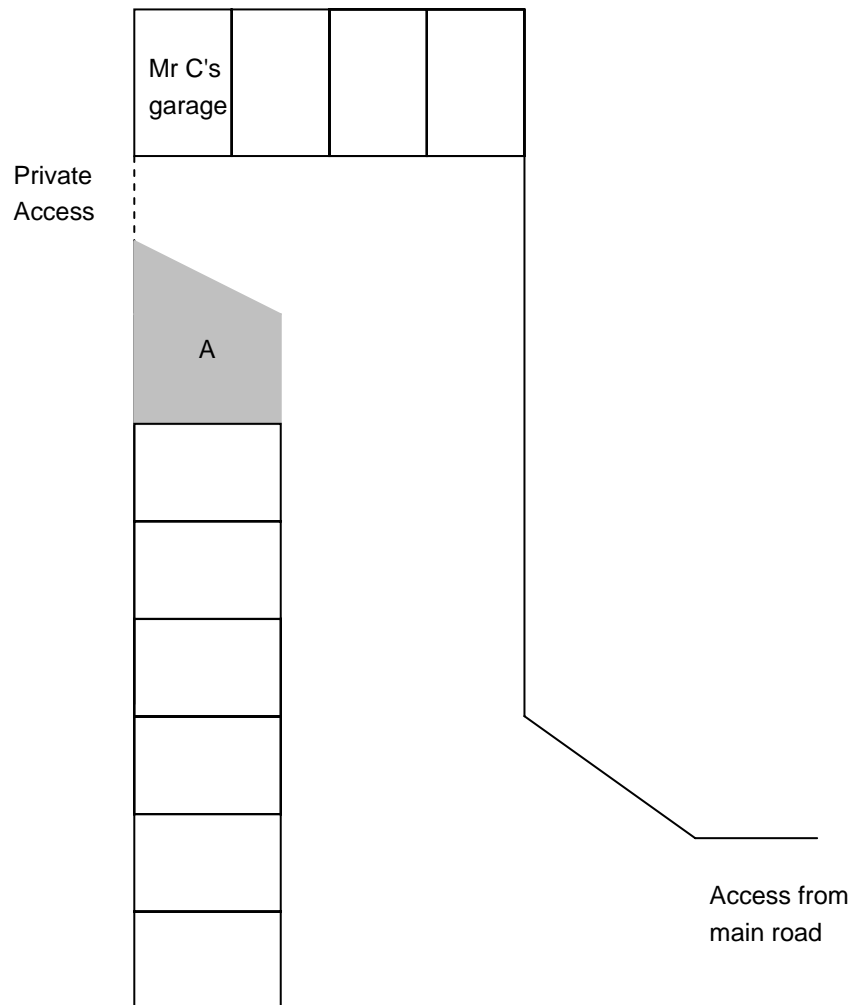
2. Although the issues in this complaint have been ongoing since 1998, and the history of the period is detailed in this report, the focus of the investigation has been on the specific enquiries and complaints raised by Mr C since March 2005. Similarly, it should be clearly understood that it was open to Mr C to satisfy himself about any matters related to the ownership of his property, including matters affecting access to and from his garage, at the time of purchase.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including communication between the Council and Mr C, internal correspondence of the Council and correspondence between the Council and other interested parties. I also visited the site of Mr C's garage. 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.

Complaint: The Council did not deal appropriately, or adequately, with Mr C's enquiries and complaints regarding the use of Council land opposite his garage

4. In September 1998 Mr C purchased a house, which included a separate lock-up garage in a block of four at the rear of the property. The layout of the garages and the road leading to them can be seen below:



The doors of Mr C's garage opened outwards and Mr C understood that the previous owner had leased the piece of land marked 'A' from the Council in order to ensure that he could drive into, and out of, the garage easily. Mr C had not sought to clarify this himself or via a solicitor prior to agreeing the purchase of the property. On 23 September 1998 Mr C asked the Council if he could take over the previous owner's lease.

5. Mr C did not receive a written response to this enquiry, and made several telephone calls in 1998 and 1999 seeking an answer. An Estates Surveyor (Estates Surveyor 1) wrote a memo to the Council Solicitor on 13 November 1998 requesting the legal position on leases in the event of the leaseholder's death. The Council Solicitor did not reply to this email until 26 October 1999, 11 months later. The Council have advised me that 'there is no information on file as to why it took 11 months for the Council Solicitor to

respond to [the memo] but I can only assume that the matter was overlooked until a reminder was sent ... on 8 September 1999'.

6. In the meantime, on 28 July 1999, Mr C wrote to the Estates Manager requesting a response as two untaxed vehicles had now been parked on the land, and were making driving into, and out of, the garage difficult.

7. Evidence that I have seen shows that Mr C continued to pursue a definite answer as to whether he would be able to lease the land, as the previous owner had done, and continued to write to, and telephone, the Council throughout 1999, 2000 and early 2001.

8. Mr C received a letter from a Council Surveyor on 13 March 2001, informing him that there was some confusion as to who was dealing with the matter. This was followed by a letter from Estates Surveyor 1 on 2 April 2001, informing Mr C that she had been allocated his case to investigate, that the abandoned vehicles section had been asked to arrange removal of the vehicles and that she was investigating his application to lease the land. Estates Surveyor 1 visited the site on 2 August 2001 and noted the details of two untaxed vehicles abandoned on Council-owned ground.

9. Later that month, Mr C asked a local councillor (the Councillor) to make representations to the Council on his behalf. The Councillor corresponded with the Council about the matter and subsequently told Mr C about Estates Surveyor 1's visit. The Councillor said that Estates Surveyor 1 had arranged for the two vehicles to be removed and that she had contacted the Housing Department for confirmation that the lease could be created in Mr C's favour. The Councillor also mentioned that the possibility of selling the land was being considered and that the Head of Property Management would contact Mr C directly confirming the current position.

10. By February 2002 Mr C had not received any further communication from the Council, and he wrote to the Councillor to inform him of this, and ask him if he would again make representations to the Council. The Councillor agreed to this and wrote again to the Head of Property Management.

11. On 20 February 2002 Estates Surveyor 1 and another Estates Surveyor (Estates Surveyor 2) visited the site. Estates Surveyor 2 saw that the two untaxed vehicles, noted as being abandoned on the site in August 2001, were

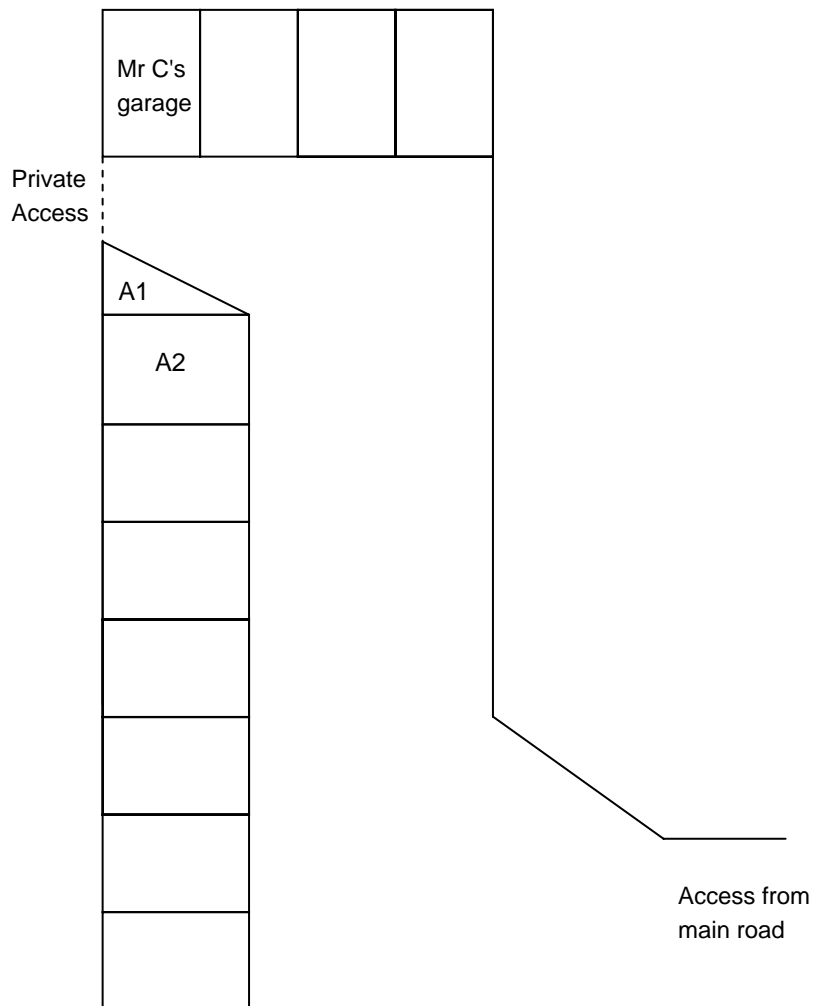
still there. 'Authorisation to Remove' stickers had been put on the vehicles. Estates Surveyor 2 contacted Environmental and Consumer Services to ask when the vehicles would be removed. She was told that one of the cars had not been removed as it required a forklift truck and an outside company were contracted to undertake such work for the Council. The company had not had a forklift truck available to do this, but Estates Surveyor 2 was told that the company would be contacted and asked to arrange this. The owner of the other car had come forward in response to the sticker, and, therefore, it could not be removed as abandoned. Estates Surveyor 2 was told a letter giving 21 days notice to remove the vehicle would need to be sent to the owner before the Council could remove it as abandoned. Estates Surveyor 2 also wrote to the Director of Housing, asking for the land to be declared surplus to requirement and available to disposal. She told Mr C this in a letter of 22 February 2002.

12. I asked the Council why the issue was passed between departments for so long without ownership being taken and why the promised letter confirming the Council's position was not sent to Mr C until the local Councillor had intervened. The Council advised that 'there is no correspondence on file to suggest why there was a delay in sending this letter'.

13. I asked the Council what steps had been taken between August 2001 and February 2002 to acquire the use of a forklift truck or send the letter giving 21 days notice to remove the vehicle to the owner. I was told that the appropriate department no longer held any records showing what steps were taken.

14. Correspondence supplied by the Council indicated that the vehicles were removed by March 2002 and, in May 2002, Mr C and another party interested in purchasing the land were asked what they intended to do with the land if it was sold to them. Mr C indicated he intended to erect some form of fencing and a sign indicating parking was not permitted. Evidence that I have seen shows that he made it clear his aim was to ensure he could easily drive in, and out, of his garage and would be happy if the Council were prepared to take action to ensure this. Estates Surveyor 2 told the Director of Housing that the other interested party intended to erect a fence and use the land to park vehicles on. She said that the small rental value of the land suggested that putting the site onto the open market would be a sensible option, and it would also relieve the Council of any future problems that may arise.

15. On 17 September 2002 Estates Surveyor 2 informed Mr C that no long term decision had been made regarding the land due to an ongoing review of all garages and parking areas owned by the Council. The Director of Housing had proposed an interim measure, whereby part of the land would be leased to Mr C, and the other part to the other interested party for a period of one year on the condition that no fences or carports be erected on the land. Mr C would be leased the area marked A1 below, while the other party would be leased the area marked A2:



16. Mr C responded on 23 September 2002. He indicated that he did not support the proposal, highlighted again that his only concern was being able to easily enter, and exit, his garage and suggested that the erection of a sign indicating that parking was not permitted would be a reasonable alternative to fencing.

17. On 31 October 2002 Estates Surveyor 2 advised Mr C that the Director of Housing was unwilling to take any further action concerning the land until the review of garages and parking areas was complete. She said that the ground would be inspected on a regular basis to ensure it was not being used without permission, and that she would contact Mr C as soon as she had any further information.

18. I asked the Council when the review of garages and parking areas had been completed. The Council told me 'the review of Council's garages has been put on hold and decisions on disposals are currently being made on a case by case basis'.

19. Having received no communication from the Council, and having continued to be hindered in entering, and exiting, his garage by vehicles parked on the land, Mr C wrote to Estates Surveyor 2 on 11 November 2004, two years after his last evidenced contact with the Council, requesting an update on the current situation. On 22 November 2004 Mr C received a response from another Estates Surveyor (Estates Surveyor 3) indicating that as Estates Surveyor 2 no longer worked for the Council she had been allocated the case and would respond more fully in due course.

20. I asked the Council why no contact had been made with Mr C between 31 October 2002 and 11 November 2004. They told me that 'As [Mr C] had rejected the Council's offer to lease part of the land no further action was taken. The file was closed until further correspondence was received from [Mr C]'.

21. By March 2005 Mr C had not received any further communication from the Council, and he wrote to the Councillor to inform him of this, and to ask him if he would again make representations to the Council. The Councillor agreed to this and wrote again to the Head of Property Management.

22. On 30 March 2005 Estates Surveyor 3 wrote to Mr C. She apologised for the delay in responding to him and indicated that she had visited the site. She said that she believed the sale of part of the land (marked A2), and the construction of a garage there would discourage parking on the other portion of the land (marked A1), and still leave sufficient space for Mr C to access his garage. She asked Mr C for his views on this idea and informed him that the Council had received a further enquiry about purchase of the land. She

assured him that if the land were to be sold the Council would seek to agree satisfactory terms to ensure that access to his garage was retained.

23. Mr C called Estates Surveyor 3 on 8 April 2005. He said that he had no issue with the sale of the land or the construction of a garage, but he was concerned that this would not remove the problem of the parking of abandoned vehicles blocking access to his garage.

24. Estates Surveyor 3 wrote to Mr C on 15 April 2005 proposing a solution to the issue, whereby a garage would be built on portion A2, and Mr C purchase portion A1 for a given price and take responsibility for the legal fees involved in the sale. Mr C would have to agree to use the land only as garden ground and maintain it in reasonable condition.

25. Mr C replied to this offer on 27 April 2005. He refused the proposal, stating that he felt he was being asked to pay to effect the removal of the abandoned vehicles which he felt the Council should be pursuing. He made the alternative proposal that either the Council properly maintain portion A1, or the Council lease portion A1 to Mr C at a value determined by the District Valuer with an adjustment for the maladministration he said he had experienced over the previous six years, or the Council sell portion A1 to Mr C at a value determined by the District Valuer with the Council responsible for any associated costs of sale.

26. In the meantime, the Councillor had received a response from the City Development Department. The Councillor told Mr C that he had been told the Council were hopeful that the negotiations with the two interested parties would result in an acceptable solution but that if it did not, the erecting of a fence on the land would be recommended.

27. On 2 June 2005 Estates Surveyor 3 wrote to Mr C suggesting that the whole area of land be sold to the other interested party on the basis that a garage be constructed on portion A2 and portion A1 be fenced off to prevent parking on it. Estates Surveyor 3 offered to meet with Mr C and the other interested party on the site to determine the best position for the fencing.

28. Mr C responded to this letter on 20 June 2005 advising that he was largely content with the solution. He also took up the offer of a meeting on the site.

29. The on-site meeting was held on 13 July 2005. Mr C believed agreement was reached at this meeting, that the other interested party would purchase the land for the purposes of erecting a garage and fence off the remaining area.

30. On 15 November 2005 Estates Surveyor 3 wrote to Mr C's local Community Council, advising them that an agreement had been reached to sell the land with the condition that a garage be erected within six months of the conclusion of the sale.

31. On 21 November 2005 Mr C wrote to Estates Surveyor 3 advising of the details of an abandoned vehicle on the land. Having received no response, he followed up this letter on 18 December 2005 and 23 January 2006.

32. On 27 January 2006 Estates Surveyor 3 responded to Mr C. She advised him that she had not received his letters of 21 November or 18 December 2005 but had asked the Environmental and Consumer Services Department to arrange for the removal of the abandoned vehicle. She enclosed a copy of the relevant memo for Mr C's information.

33. There was some delay to the Council's action as the details Mr C had provided were not correct. Following receipt of the correct details the Council visited the owner of the vehicle who advised them that he had the Council's permission to park the vehicle on the land.

34. I asked the Council what steps they had taken to ascertain whether or not permission had been given to park the vehicle on the land. They advised me that 'no confirmation was made with the landowner ([the Council] Housing Department) to clarify whether permission had been granted or not. However no complaint was ever received by the Environmental Wardens regarding this vehicle from the landowner'. The Council advised me that as the vehicle was in reasonable condition and had been legally registered with a Statutory Off Road Notice (SORN) the Council deemed that the vehicle was not abandoned and, therefore, took no further action.

35. On 21 March 2006 Mr C complained to the Ombudsman. He gave a brief history of his complaint and noted that the vehicle he had reported was still in the same place and that he had had no further contact from the Council.

36. On 27 March 2006 Mr C wrote to Estates Surveyor 3 expressing his frustration that no action had been taken. Estates Surveyor 3 issued further instructions to remove the vehicle but when the Council made enquiries they were advised that the new owner of the land had given permission for the vehicle to be parked there. The Council have told me that the wife of the last registered keeper of the vehicle told Council officers who visited that the vehicle was on the land with the permission of the Housing Department of the Council. The Council felt there was no reason to doubt the word of the last registered keeper's wife because no complaint had been received from the Housing Department about the vehicle.

37. I asked the Council how, and when, Estates Surveyor 3's request for the vehicle to be moved was made. The Council advised me that there was no documented record of the request but it was believed to have been made by telephone shortly after Estates Surveyor 3 received Mr C's letter. A site visit was made on 5 April 2006.

38. During this period the sale of the land was being progressed and the settlement date for the sale of the land was 20 April 2006. A title dispute with a neighbouring owner delayed registration and, at the time of writing, this has not been settled.

39. The Council's Head of Corporate Property and Emergency Planning responded to Mr C in a letter of 25 April 2006. He told Mr C that the Council believed an agreement had been made at the on-site meeting of 13 July 2005, that no further action would be taken to remove abandoned vehicles from the site until the sale of the land had been concluded. He also said that the Department of Environmental and Consumer Services had advised that the vehicle was neither abandoned nor on the public highway but 'parked without permission on Council land' and that this limited the powers available to the Council to remove it. He also advised that the sale of the land was very close to conclusion.

40. I asked the Council what powers were available to them to deal with vehicles parked without permission on Council land. They told me that vehicles that are stored on private land without permission of the landowner, and are not in regular use, can be deemed to be abandoned whether they are registered with a SORN or taxed. On the expiry of a 15 day statutory notice to the landowner the vehicle can be removed by a local authority.

41. On 27 April 2006 Mr C wrote to the Head of Corporate Property and Emergency Planning. Mr C disputed that any agreement that no further action would be taken to remove abandoned vehicles had ever been made. He asked why nothing had been done about vehicles 'parked without permission' on Council land which they had been aware of for several years and what action the Council was going to take in response to this. The Council did not respond to this letter.

42. I asked the Council what steps had been taken to remove the abandoned vehicles in response to Estates Surveyor 3's memo of 23 January 2006. The Council advised me that the owner of the vehicle advised a Council officer that he had the Council's permission to park on the land, although this was subsequently found not to be the case. This information was not communicated to Estates Surveyor 3 until after Mr C's letter of 27 March 2006 was received.

43. I asked the Council what evidence they had for their belief that an agreement that no further action would be taken to remove the abandoned vehicles had been made. The Council advised me that no note had been made of the conversations during the site visit. The statement is based only on the belief of Estates Surveyor 3.

44. I asked the Council why no response had been made to Mr C's letter of 27 April 2006. They told me that they could find no evident reason for this and suggested that it was likely that due to a heavy workload at the time the correspondence was overlooked.

45. The Refuse Disposal (Amenity) Act 1978 (the Act), section 3(1) states that 'where it appears to a local authority that a motor vehicle in their area is abandoned without lawful authority on any land ... it shall be the duty of the authority ... to remove the vehicle'.

Conclusion

46. As noted above, this investigation has focused mainly on the Council's responses to and handling of Mr C's complaint since March 2005. Throughout his correspondence with the Council, evidence shows that Mr C made clear that his aim was to ensure he could enter, and exit, his garage unimpeded. He sought their advice on how to do this in terms of leasing or purchasing the ground and having abandoned and tax-less vehicles removed. The Council did

not have any responsibility to ensure that Mr C could access his garage. Mr C says that he purchased his property, including the garage, assuming that he would be able to lease the land opposite the garage. However, that assumption was not clarified or formalised at that time. Nonetheless, the Council did have responsibilities to respond appropriately to his enquiries, including those related to vehicles parked without permission or abandoned on land owned by the Council.

47. The Council did not provide a substantive response within a reasonable time to Mr C's letter of 11 November 2004 (see paragraph 21), however, I note that Estates Manager 3 did apologise for this in March 2005 (see paragraph 23). However, another letter from Mr C, dated 27 April 2006, was not responded to at all (see paragraph 42) and while the Council's stated reason for this, a heavy workload, would adequately explain a late response, it does not explain a lack of response. The Council's poor record-keeping in relation to the meeting with Mr C and his neighbours (see paragraph 44) meant that the issues Mr C brought up were further complicated.

48. In late 2005 and early 2006 Mr C reported an abandoned vehicle on the land (see paragraph 32) and, while Estates Surveyor 3 appropriately requested the removal of that vehicle, the Environmental and Consumer Services Department did not adequately respond to the request. It is logical to conclude that the Environmental and Consumer Services Department considered that the vehicle was parked with the permission of the Housing Department, as the reason given for the decision not to initiate the process to have the vehicle removed (see paragraph 41) was that on two occasions Council officers were advised of this permission by the owner of the vehicle and his wife (see paragraph 34 and paragraph 37) and that no complaint had been received from the Housing Department (see paragraph 37). However, the Council have not been able to demonstrate that any steps were taken to confirm the information that the Council officers had received. I consider that reaching this conclusion without the presence of clear evidence to support it represented maladministration on the Council's part.

49. The issues Mr C raised should have resulted in a relatively straightforward investigation and response by the Council. However, the failure of the Environmental and Consumer Services Department to properly investigate whether the vehicle was parked with permission meant that the issue was not concluded as promptly as it should have been. The Council's response to my

enquiry about what steps had been taken to investigate this was that no complaint had been received from the relevant department. The Council's consequent conclusion, that something not being complained of must be both known of and acceptable, is indicative of the Council's failure to pursue a definitive conclusion to the specific complaint that I have investigated. Given all of the above, I uphold the complaint.

Recommendations

50. The Ombudsman recommends that the Council:

- (i) review their procedures and practice on the investigation of complaints of abandoned vehicles to ensure that any claims that vehicles have been parked with permission are appropriately verified; and
- (ii) apologise to Mr C for the maladministration he has been subject to.

51. 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.

Explanation of abbreviations used

Mr C	The complainant
The Council	City of Edinburgh Council
Estates Surveyor 1	The Estates Surveyor who first visited the site on 2 August 2001
The Councillor	Mr C's local councillor
Estates Surveyor 2	The Estates Surveyor who first visited the site on 20 February 2002
Estates Surveyor 3	The Estates Surveyor who first visited the site in March 2005
SORN	Statutory Off Road Notice
The Act	The Refuse Disposal (amenity) Act 1978

List of legislation and policies considered

The Refuse Disposal (Amenity) Act 1978

