

Case 200800255: Glasgow City Council

Summary of Investigation

Category

Local government: Social Work and Planning; complaint by neighbours about proposed extension of care facility

Overview

The complainant (Mr C) raised concerns about how Glasgow City Council (the Council)'s Social Work Service handled complaints made by local residents about problems arising from a nearby children's unit (the Children's Unit), about the Social Work Service's application for planning consent for the extension of the Children's Unit, and the consideration of that application by the Council's Development and Regeneration Service.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council's Social Work Service failed to record and respond appropriately to complaints about the behaviour of children in the Children's Unit (*partially upheld*);
- (b) the Council's Development and Regeneration Service arbitrarily extinguished conditions attached by the former authority to a previous consent for change of use relating to car parking and the maximum number of children to be accommodated (*not upheld*); and
- (c) the Council's Development and Regeneration Service failed in considering the application for the extension of the Children's Unit accurately to apply a relevant City Plan policy with reference to retained landscaped area within the curtilage of the property (*not upheld*).

Redress and recommendations

The Ombudsman recommended that the Council review whether, in the case of complaints about the Social Work Service management response to problems emanating from children in the Council's care, which are not appropriate for being dealt with in terms of the statutory procedure, these should be considered under their corporate complaints procedure.

The Council have accepted the recommendation and will act on it accordingly..

Main Investigation Report

Introduction

1. The complainant (Mr C) is the owner of a property in the vicinity of a terrace of houses in Glasgow, two of which were converted in the 1990s to form a children's home (the Children's Unit) by the former Strathclyde Regional Council. His complaint was supported by six of his neighbours. On 1 April 1996, responsibility for the management of the Children's Unit transferred on local government reorganisation to Glasgow City Council (the Council). In the recent past, neighbours of the Children's Unit were concerned at the conduct of young people and were not happy with the response to complaints that they submitted to the staff and the manager. In 2007, the Council's Social Work Service applied to the Council's Development and Regeneration Service for planning consent for an extension to the Children's Unit (the Application).

2. The complaints from Mr C which I have investigated are that:

- (a) the Council's Social Work Service failed to record and respond appropriately to complaints about the behaviour of children in the Children's Unit;
- (b) the Council's Development and Regeneration Service arbitrarily extinguished conditions attached by the former authority to a previous consent for change of use relating to car parking and the maximum number of children to be accommodated; and
- (c) the Council's Development and Regeneration Service failed in considering the Application accurately to apply a relevant City Plan policy with reference to retained landscaped area within the curtilage of the property.

3. Mr C and his neighbours made five other complaints including that the Council's Social Work Service and their predecessor had failed to honour assurances given to neighbours in 1993, had failed to comply with a condition relating to the 1994 consent and, in respect of the Application, had failed to notify neighbours. In respect of the responsibility of the Council's Development and Regeneration Service, Mr C was aggrieved that that service had not ensured that appropriate neighbour notification was carried out and that the Application had not been referred to Scottish Ministers in view of the Council's involvement as developer. On 2 October 2008, I provided Mr C and the Council with a detailed statement of my reasons for not pursuing further those five complaints.

Investigation

4. My investigation is based on information provided by Mr C and his neighbours. In addition, I made enquiry of the Council, considered their response and interviewed Council officers on specific points. 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.

5. Mr C resides at 28 X Road, Glasgow. He complained on his own behalf and on behalf of six other residents of properties at 32, 42, 44, 46, 48 and 50 X Road. His neighbours at 48 X and 50 X Road died after the complaint was submitted to the Ombudsman. His five neighbours at 42-50 X Road reside in a terrace of seven houses built in the early 1900s. Immediately next to Mr C's house at 28 X Road is a drug addiction unit. To the rear of the properties, a new primary school is currently being built on the grounds of a former secondary school.

6. In 1993, the former social work authority, Strathclyde Regional Council, applied to the former City of Glasgow District Council for planning permission for change of use of two houses at 52 and 54 X Road to a single residential home (the Children's Unit). According to Mr C, all residents were notified of the plans. Strathclyde Regional Council's Social Work Service convened a meeting at which they gave residents assurances about the age of children who would be accommodated and about a maintenance management schedule for the garden area.

7. Mr C stated that, over the years, the operation of the Children's Unit had proved problematic for residents. Youngsters up to the age of 16 years had been catered for, garden areas had not been maintained, and young people congregating around the Children's Unit had intimidated neighbours. In Mr C's view, staff had not exercised proper control and the police had been regular visitors.

8. Mr C informed me that his fellow residents had not been aware that the Application had been made by the Council's Social Work Service in the summer of 2007 or that it had been granted conditional approval under delegated powers on 27 August 2007 by the Council's Development and Regeneration Service. The Council, however, informed me that shortly after the local

government elections in May 2007 the four local councillors were made aware that the Social Work Service intended to apply for planning consent. The Community Council were sent a list which included the Application. The Social Work Service maintained that they hand delivered a neighbour notification to the resident at 50 X Road. Mr C's late neighbour was adamant that he had not received this.

9. The first that other owners knew of the proposals came as a result of a chance remark made to Mr C's neighbour at 42 X Road while playing golf. That neighbour visited the Council's Development and Regeneration Service and inspected and copied relevant plans. He alerted his fellow neighbours, a committee was formed, and Mr C was tasked with writing to the Council.

10. On 18 November 2007, Mr C wrote to the Director of the Council's Social Work Service complaining that residents had not been notified and consequently had not had the opportunity to raise objections. After viewing the plans, they considered the proposed extension to the Children's Unit was excessive in size and that it left little usable garden area on the premises. Mr C maintained the Social Work Service had already breached title conditions by allowing a nuisance to be caused, by fencing off part of a rear lane, and by neglecting to maintain their garden area. Mr C stated that the Application should have been advertised as a 'bad neighbour' development. He also claimed that assurances about the ages of children catered for had been breached. Enquiries by the local councillor had disclosed 47 complaints to the police over the past year and 230 visits by the police.

11. Mr C pointed out that the two residents closest to the Children's Unit had both been elderly and vulnerable and had suffered misery from the children's conduct. Mr C instanced that the children of other residents had experienced abusive behaviour, a resident's greenhouse had been damaged extensively, and that contrary to assurances given in 1993, children up to 16 years had been accommodated. Mr C stated that he had involved a local councillor and MSP. Mr C raised 17 points and intimated that residents were not prepared to tolerate the Children's Unit any longer and asked the Director of the Council's Social Work Service to close the facility. He said residents were prepared to take their case to the media, the Scottish Parliament, and any other appropriate body. This letter was copied to the Director of the Council's Development and Regeneration Service. A petition with 28 signatories was submitted.

12. On Thursday 22 November 2007, residents met with four of the Council's Social Work Service officers at a local community centre. The Director of the Council's Social Work Service responded on 27 November 2007 to 15 of the 17 points and referred two to the Council's Legal Service. The Director of the Council's Social Work Service stated that appropriate neighbour notification had taken place with the resident at 50 X Road, and that the Council's Education Service and Land Service had been consulted. There had been no requirement to notify other residents, no change of use, and no need to advertise the extension as a bad neighbour development. The existing Children's Unit would be used to allow for the refurbishment of two other units in the city. Work on the extension was not planned to commence before January 2010. The Director of the Council's Social Work Service expressed his regret if any young children in the vicinity of the Children's Unit had been unable to play in their own garden but stated that the Social Work Service were not aware of any complaints of this nature.

13. Mr C wrote to the Director of the Council's Development and Regeneration Service on 17 January 2008 raising issues concerning neighbour notification, failure to advertise the extension proposal as 'bad neighbour development' and the appraisal of the Application against City Plan policies RES 9 and RES 15 (Annex 2). The Director of the Council's Development and Regeneration Service replied on 7 February 2008 to each of these three points. Mr C responded by seeking clarification on the calculation of the dimensions of the site and asked why development was considered acceptable in terms of City Plan policy RES 9. An explanation was supplied on 4 March 2008. That letter stated that amendments had been made to the initial layout and that would lead to an increase to 45% of available space.

14. On receipt of this information from the Council's Development and Regeneration Service, Mr C resumed his correspondence with the Director of the Council's Social Work Service and responded on 11 March 2008 to his letter of 27 November 2007. He raised matters about the neighbour notification and title deeds, queried the calculation of available space, and noted that, after a period of neglect, the garden area at 52-54 X Road had been tidied up on the day of the meeting on 22 November 2007. He asked the Director of the Council's Social Work Service to visit and to reconsider the proposal for the extension.

15. The Director of the Council's Social Work Service responded to Mr C on 8 April 2008. He stated that the Council's Development and Regeneration Service had been satisfied regarding available space. He said that he had no plans, at that stage, to relocate the Children's Unit to another site. He confirmed that he had personally visited the site. He acknowledged that the new primary school was sited much closer than the Council's Social Work Service had envisaged and stated that they were currently reviewing how this might affect the long-term operations of the Children's Unit and plans in respect of the extension.

16. Mr C first wrote to the Ombudsman's office on 24 April 2008. He was advised of the need to complete the Council's complaints procedures. He did so, and received a reply from the Council's Corporate Customer Care Officer on 14 July 2008. He was unhappy with that response and reverted to the Ombudsman on 29 July 2008.

(a) The Council's Social Work Service failed to record and respond appropriately to complaints about the behaviour of children in the Children's Unit

17. In his letter of 27 November 2007 to Mr C (paragraph 12), the Director of the Council's Social Work Service acknowledged that there had been past operational problems with the Children's Unit but maintained that matters had improved in the past year. He explained that the high number of police visits were a consequence of missing children procedures and follow-ups. He knew of no known problems from the drug unit or the new primary school site. Historically, the Children's Unit had only accommodated six children at any one time. The Director of the Council's Social Work Service was unable to accept that some of the specific assertions made by Mr C had been raised before, or were an accurate portrayal of the current situation. The neighbour's greenhouse had been removed three years' previously and it had been many years since ten-year-olds had been accommodated at the Children's Unit.

18. I asked Mr C on 2 October 2008 to detail the nature of the problems residents had experienced from the Children's Unit and the Council's response. By the time he responded on 27 October 2008, Mr C's neighbours at 50 X Road and 48 X Road had died. Mr C recounted that his neighbour at 50 X Road had over a number of years suffered nuisance, noise and inconvenience and had complained frequently without appreciable difference. Specifically, that neighbour had had his greenhouse smashed on so many occasions that he

gave up on repairs. The Council's Social Work Service had acknowledged responsibility for the repairs but Mr C's late neighbour had decided in light of the continued vandalism that it was no longer practical to keep a greenhouse. A neighbour at 46 X Road referred to verbal and physical threats from residents at the Children's Unit, excessive noise levels from hi fi music speakers being placed on window ledges, graffiti, damage to property, children urinating in a rear lane, and residents of the Children's Unit coming to the door asking for money in a menacing way. These matters had been raised with the Children's Unit staff and a former manager. That manager left but his post was not filled immediately. Neighbours at 44 X Road referred to a lack of ability to talk to staff to request action in response to complaints about excessively loud music and abusive language from residents in the summer of 2007 and children from the Children's Unit coming to their door seeking to offer to sell them such items as mobile telephones and jewellery.

19. In response to my initial enquiry, the Council informed me that their premises at 52-54 X Road comprise a Children's Unit where the Council accommodates vulnerable young children as a place of safety rather than as a secure unit. Young people visit their families and, when they do not return to the Children's Unit as expected, Strathclyde Police might be involved in identifying their whereabouts and returning them safely.

20. The Council stated that childrens' unit managers throughout the city are expected to deal with, record and attempt to resolve amicably and informally any concerns raised by neighbours. The Children's Unit's records confirmed that between 2 February 2006 and 28 October 2006, seven complaints from Mr C's neighbours were recorded but that in most of the seven complaints it was not possible to distinguish whether the children involved were in the Council's care or were neighbouring children.

21. In responding on 19 February 2009 to my further enquiry, the Council's Corporate Compliance Officer stated that the Council would deal with complaints from someone who is not a customer of the Council in two ways. If the person wanted to make a complaint on behalf of a customer of the Council then they would require him or her to be the legal representative of the customer or to get a mandate from the customer confirming that they are happy to be represented by the other person. These types of complaints are dealt with under the statutory social work complaints procedures as laid out in the Social Work (Representations Procedure) (Scotland) Directions 1996 and the Council's

Social Work Service complaints policy. If the person is making a complaint on their own behalf about a service failure of the Council, then it would be dealt with under the Council complaints procedure. Mr C and his fellow residents were not making a complaint about a service that the Council had failed to provide to them. Their correspondence was dealt with as 'views and concerns being expressed' by a resident of Glasgow requiring a response, outwith the formal complaints procedure. The Council informed me that no formal complaints had been recorded at the Council's Social Work Service headquarters after 1 January 2006.

22. At the Children's Unit, representations by neighbours were logged in a book, known as the 'complaints book'. Matters recorded in that book were considered to be 'expressions of concern'.

23. The Council's Corporate Compliance Officer in her letter of 19 February 2009 stated that the Council had a duty to exercise care and control in order to safeguard a child's welfare and protect them under the Children's (Scotland) Act 1995 and a specific power under section 17 (5) to exercise measures of control over a child for the purposes of protecting a member of the public from serious harm. The Council provide a service to the child of caring for and protecting them and, as part of that service, the Council give guidance on the child's conduct. The Council also take steps to modify and control the child's behaviour in a manner suited with its best interests, the background which is causing that behaviour, and the child's care plan. The Corporate Compliance Officer pointed out that the Council's legislative responsibilities do not require the Council to provide a service to the public of controlling the behaviour of young people in their care; nor do those legislative responsibilities require the Council to provide a service of ensuring that the young people in their care conform to standards of behaviour acceptable to any given individual member of the community.

(a) Conclusion

24. The evidence before me suggests that the residents and late residents of X Road on whose behalf Mr C has complained may on occasions in the past have suffered from unacceptable behaviour by young people, some of whom might have been residents of the Children's Unit while others might well have been other children from the wider neighbourhood. Mr C or his neighbours might not always have been able to ascertain whether the children involved were residents in the Children's Unit and in the care of the Council.

25. Where the behaviour is seriously unacceptable for example, in involving vandalism or damage to property, threat or actual physical violence, or riotous assembly, then it is open to Mr C and his neighbours to involve the police. In a normal environment, where troublesome matters involve children, some adults might initially wish to raise matters less formally with the adult responsible for those children. Whether such a grievance is called a complaint or a concern is a matter of nomenclature. What I believe is necessary, if a children's unit such as this is to be accepted in its local setting, is that neighbours' concerns are properly recorded, and that appropriate action as far as is possible is taken locally. In a grievance about the local handling, it should clearly be possible for the person or persons aggrieved to escalate their concerns to those officers in the Council's Social Work Service headquarters who have responsibility for the management of the particular children's unit. That should not imply that it be dealt with in terms of the statutory social work complaints procedures. Given the way that the Council view 'complaints' to be distinct from 'concerns' it clearly follows that they would have no formal complaints recorded after 1 January 2006.

26. Since neither the Council nor I can say with certainty that the local complaints book fully records all the reported concerns made by neighbours or that a means exists of recording concern about the response of the management or staff at the Children's Unit, I partially uphold this complaint.

(a) Recommendation

27. The Ombudsman recommended that the Council review whether, in the case of complaints about the Social Work Services' management response to problems emanating from children in the Council's care which are not appropriate for being dealt with in terms of the statutory procedure, these should be considered under their corporate complaints procedure.

28. The Council informed the Ombudsman that they accepted his recommendation. They stated that a meeting had been held on 3 June 2009 to discuss this issue, in advance of the issue of the draft report. The meeting involved the Head of Children and Family Services, Principal Complaints Officer, Principal Officer for Residential Services and others. As a result of this meeting, a revised good neighbour policy was in process of being drafted for circulation to all children's units, together with a procedure guidance note specifically on the issue of handling neighbour complaints. This latter document

directs staff as to the handling of complaints from neighbours/the community in terms of local resolution and response. The guidance also instructs staff to issue written responses at the end of that process, directing complainants to the Council complaints procedure if unhappy with the outcome. The Council stated that this would trigger a process which examines whether all relevant steps have been taken by management to address the issues and whether the complaints have been responded to in terms of the guidance on local resolution. The guidance is in the process of being finalised and a copy would be forwarded to the Ombudsman.

(b) The Council's Development and Regeneration Service arbitrarily extinguished conditions attached by the former authority to a previous consent for change of use relating to car parking and the maximum number of children to be accommodated

29. The initial application made by Strathclyde Regional Council to the City of Glasgow District Council was for full planning permission for use of two houses as a children's home. It was granted conditional consent on 23 May 1994 subject to eight conditions which included provision for off-street parking of three vehicles and a maximum of eight children resident at any one time. The consent granted for the Application on 27 August 2007 under delegated powers (paragraph 8) contained no condition relating to parking or the maximum number of children who could be accommodated at any one time.

30. In her response of 14 July 2008 on behalf of the Chief Executive to Mr C's complaint, the Council's Corporate Customer Care Manager informed Mr C that the planning permission granted in 1994 was effectively subsumed into the full consent granted in August 2007. The Application was for an extension to the kitchen area and to allow for the provision of accommodation for two additional children appropriate to legislation in force in 2007. She stated that there was no question of the Council's Development and Regeneration Service making an arbitrary decision.

31. In her response of 19 February 2009 to me the Council's Corporate Compliance Officer informed me that the sleeping accommodation proposed in the Application is for eight residents. The Council applied City Plan policy TRANS 4 to the proposed provision of two parking spaces instead of the three which were already there.

32. I shared that response with Mr C. With regard to car parking, he did not question compliance of the Application with City Plan policy TRANS 4. He emphasised that the 1994 consent demanded provision for three vehicles in the interest of traffic safety and to safeguard the amenity of the surrounding area and that anything less, therefore, constituted a detriment in traffic safety and residential amenity.

33. At interview with officers of the Council's Development and Regeneration Service on 15 May 2009, I was informed that the 1993 application had been determined at a time when the City of Glasgow District Council operated some 44 local plans dating back to 1965. Arguably, the Development Plan was less robust. In the intervening years since approval of the earlier application, government policy in respect of a move to greater utilisation of public transport and local policy of the City of Glasgow District Council had changed. This was reflected in the former Scottish Executive's Scottish Planning Policy (SPP 17) *Planning for Transport* and in the Council's City Plan policy, which was adopted in August 2003. The Council had moved away from specifying a minimum number of parking spaces to recommending in this case that two car parking spaces be provided.

34. Those officers also pointed out that the Children's Unit required to be registered with the Scottish Commission for the Regulation of Care (the Care Commission). In registering the Children's Unit, Care Commission standards on single child occupation of rooms and staff to resident ratios effectively determine the maximum number of children that can be accommodated at any time.

(b) Conclusion

35. In common sense terms one might expect that an extension to premises would allow for more children to be accommodated and would generate a need for more parking provision rather than less and that approval of the Application arbitrarily departed from higher standards. I believe that the Council's position as explained to me at interview, illustrates the Council's responsiveness to changes that have occurred in government policy in the 13 years since the initial consent for the Children's Unit. I believe that the Council might have taken more effort to explain the position earlier but I do not consider that the Council's decision making was arbitrary. I do not uphold the complaint.

(c) The Council's Development and Regeneration Service failed in considering the Application accurately to apply a relevant City Plan policy with reference to retained landscaped area within the curtilage of the property

36. Mr C considered that the relevant City Plan policy RES 9 had been disregarded by the Council's Development and Regeneration Service in granting consent under delegated powers for the extension on 27 August 2007.

37. In response to Mr C's enquiry of the Council of 13 February 2008, he was informed by the Executive Director of the Council's Development and Regeneration Service by letter of 4 March 2008 that the total site area of 52 and 54 X Road was 655 sq m, of which the front garden area was 85 sq m and the original rear garden ground was 170 sq m. It was proposed that the rear garden ground would be extended by 40 sq m to 210 sq m. The Executive Director stated that the requirement under City Plan Policy Res 9 - Residential and Nursing Homes, was that an extension would not result in the landscaped amenity area falling below 50% of the total site area. In the particular case, the amenity garden ground comprised 39% of the total site area, utilising the grassed turning head as usable garden ground, the proposed works would see the figure of usable garden ground increase to 45% of the total site area. The proposal would therefore work towards the aspiration of City Plan Policy.

38. Mr C considered that the Council had erred in their calculation of the proposed garden ground as a percentage of the site area at 45%. He calculated that only 34% of the garden ground would remain after the extension was built and that this would be well short of the 50% required by City Plan policy RES 9 (Annex 2).

39. At my interview with officers of the Council's Development and Regeneration Service I was provided with the approved drawing on which the Council's calculations had been made. The approved drawing, submitted on 1 August 2007, showed the rear area to be 281.4 sq m. Of this the existing driveway occupied 212.1 sq m and the usable garden space/amenity space in two separate areas was 169.3 sq m. The approved plan showed the extension to be 118.2 sq m. The post development driveway space would be reduced to 53.4 sq m and the usable private garden space at the rear would increase to 209.7 sq m. A sizeable part of this would, however, include an area of interlocking concrete grids set in the grass to facilitate the provision of a turning area. This area was not designated for car parking provision but was intended,

in the interests of public safety, for cars to turn and egress the driveway in forward gear. The 45% figure quoted at paragraph 37 derived from adding the existing front garden (85 sq m) and proposed rear garden (209.7 sq m) and dividing it by the total site area of 52 and 54 X Road.

40. With reference to the new school (paragraph 15), officers of the Council's Development and Regeneration Service informed me that windows in the new school had been adjusted to avoid overlooking problems with the habitable rooms in the proposed extension to the Children's Unit at 52 and 54 X Road.

(c) Conclusion

41. It is unfortunate that in their correspondence with Mr C the Council's position was not illustrated by the approved plan on which the Council's calculations were made. With hindsight, it appears that the Council's position could have been better explained at an earlier stage in the complaint. It is clear to me from the calculations provided by the Council that they had regard to the RES 9 policy in the City Plan. While the aspiration of achieving 50% usable garden space is not met, the situation which will obtain after the development is completed will in effect be a betterment, achieved by significantly reducing the rear area given over to car parking, and redesignating an area, including a proposed turning area as usable garden space. While Mr C disagrees with the inclusion of the turning area, since it is not designated as an area for parking, I consider it to be a reasonable exercise of professional judgement to include the area in their calculations. I believe that the Council's Development and Regeneration Service have strived to explain why they were able to accept the proposals. In the absence of evidence of maladministration in the process, I am unable to challenge the merits of their discretionary decision. I do not uphold this complaint.

42. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify him when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
The Children's Unit	A residential care unit for vulnerable children established by the former Strathclyde Regional Council and now managed by the Council's Social Work Service
The Council	Glasgow City Council
The Application	An application for planning consent made by the Council's Social Work Service to the Development and Regeneration Service in 2007 for a rear extension to the Children's Unit
X Road	The road on which the Children's Unit and Mr C and his neighbours' houses are situated
RES 9, RES 15 and TRANS 4	Relevant policies in the Glasgow City Local Plan (Annex 2)
The Care Commission	The Scottish Commission for the Regulation of Care

Relevant City Plan policies referred to in the report

RES 9 Residential and Nursing Homes

The Council's policy for conversion or change of use is that residential homes should not be located in semi-detached, terraced or flatted properties and that 50% of the total site should be retained for landscaped amenity space and this should include a garden.

In relation to extensions to existing residential homes, the Council's policy is that extensions will not be acceptable if this would result in landscaped amenity space falling below 50% of the total site area. Landscaped amenity space is defined as 'All external garden space, excluding the driveway, car park and servicing area'.

RES 15 House Extensions and Alterations

This policy specifically relates to dwelling houses. It states that extensions and alterations to properties should be very carefully designed to ensure that they do not over-dominate the original building or detract from the general character of the area within which the building to be extended or altered is situated. (The former use of the two dwelling houses at 52 and 54 X Road as dwellings ceased when the 1994 consent was implemented.)

TRANS 4 Vehicle Parking Standards

The relevant planning standard for parking provision in residential/care/children's homes is that in situations of base accessibility one unallocated space should be provided per eight residents.