

Case 200802060: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Buildings; statutory notices to repair private property

Overview

The complainants (Mr C and Ms D) purchased a commercial property on the ground floor of a tenement block in Edinburgh in the autumn of 2004. In the subsequent three and a half years, they received no communication from The City of Edinburgh Council (the Council). On 7 April 2008 they received accounts from the Council for nearly £7,600 in respect of works instructed under notices issued by the Council under the City of Edinburgh District Council Order Confirmation Act 1991. Mr C and Ms D raised a number of concerns about the Council's handling of the matter.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to serve Mr C and Ms D as part owners of the tenement with statutory notices issued on 13 October 2004 (*not upheld*);
- (b) failed to update their records on ownership and keep Mr C and Ms D informed of progress on the contract (*upheld*); and
- (c) failed to respond sympathetically to Mr C and Ms D's request to be given sufficient time to pay accounts for nearly £7,600 of which they had no prior forewarning (*not upheld*).

Redress and recommendations

The Ombudsman recommends that:

- (i) the statutory notice intimation and relevant subsequent correspondence include an appropriate statement for the recipient to contact the Council to alert them to any change in ownership;
- (ii) in the case of commercial properties included in statutory notices, Corporate Property and Contingency Planning institute a practice of checking with the Scottish Assessors Association website to ascertain whether there has been a pertinent recent change of ownership which would require them to update their ownership records; and

- (iii) in the light of the failure to communicate with Mr C and Ms D and update them, the Council consider whether it is appropriate to levy the full administration charge.

The Council have accepted the recommendations and have acted on them accordingly.

Main Investigation Report

Introduction

1. In the autumn of 2004, the complainants (Mr C and Ms D) bought a commercial property on the ground floor of a tenement in Edinburgh, formerly used as a shop. They intended to alter the premises and change its use. The sale was registered at the Registers of Scotland on 1 November 2004. They say that they were unaware at that time that statutory notices had been served by The City of Edinburgh Council (the Council) on the various owners of the tenement on 13 October 2004 under section 24(1) of the City of Edinburgh District Council Order Confirmation Act 1991 (the 1991 Act) (see Annex 2). In the subsequent three and a half years Mr C and Ms D say that they received no communication from the Council or the firm of surveyors (the Surveyors) appointed by the Council to oversee the contract to implement works specified in the notices. On 7 April 2008, the Council issued accounts for the works of which Mr C and Ms D's share amounted to nearly £7,600.

2. The complaints from Mr C and Ms D which I have investigated are that the Council:

- (a) failed to serve Mr C and Ms D as part owners of the tenement with statutory notices issued on 13 October 2004;
- (b) failed to update their records on ownership and keep Mr C and Ms D informed of progress on the contract; and
- (c) failed to respond sympathetically to Mr C and Ms D's request to be given sufficient time to pay accounts for nearly £7,600 of which they had no prior forewarning.

Investigation

3. I considered information and correspondence provided by Mr C and Ms D, made enquiry of the Council, met with relevant officers, and examined the Council's file on the administration of the contract for the works specified in the statutory notices. I also made an enquiry to the Assessor, Lothian Valuation Joint Board (the Assessor). 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 Ms D and the Council were given an opportunity to comment on a draft of this report.

4. Around September 2004, Mr C and Ms D purchased shop premises on the ground floor of a tenement in Edinburgh with a view to altering the property and

changing its use. That sale was not registered in the Registers of Scotland until 1 November 2004.

5. Mr C and Ms D were unaware at the time of purchase that the Council had been approached with regard to the disrepair of the building of which the shop formed part. On 13 October 2004, the Council issued two statutory notices under section 24(1) of the 1991 Act affecting the tenement and a third notice affecting the tenement and adjoining blocks. All three notices were served on the former owner of the shop at an address in Middlesex. The Council subsequently appointed the Surveyors to administer the statutory notices. In an initial letter of 21 June 2006, the Surveyors wrote to the owners listed on the notices (including the former owner of the shop) informing them of their appointment.

6. In letters of 4 and 11 December 2006, the Surveyors informed owners that the Council had authorised the implementation of repairs. The contract was awarded to a contractor with work due to start later in December 2006 and to last for 24 weeks. Details of probable costs were provided.

7. Mr C and Ms D moved to their present home address in October 2006. They wrote to the Assessor to inform her of the change of liability for council tax and to the Council Revenues and Benefits informing them that their new address should become the billing and correspondence address in respect of non-domestic rates for the shop premises. Despite that intimation, Mr C and Ms D stated that they did not receive any of the correspondence they later were advised was sent to other owners on 11 and 22 December 2006 and on 27 February, 17 April, 7 June and 5 November 2007.

8. In their letter of 5 November 2007, the Surveyors informed owners of the breakdown of costs in advance of the Council sending out accounts. The combined costs for the owners of the block totalled £7,596.70 per share. That letter was sent to the previous owners of the shop at their address in Middlesex.

9. When the previous owners of the shop premises responded that they were not liable, the accounts for Mr C and Ms D's proportionate share of the works were sent to Mr C's former address on 14 February and 20 March 2008 and were returned to the Director of Finance marked 'gone away'. At that stage, the Scottish Assessors Association website was checked and it was noted that Mr C and Ms D's current address was given as the non-domestic rates billing

address for the former shop. The invoices in respect of the three notices were then reissued by the Council's Director of Finance on 7 April 2008. These accounts were sent to Mr C and Ms D at their current home address. Mr C and Ms D say that this was the first direct contact they had received from either the Council or the Surveyors regarding the statutory notices.

10. Mr C and Ms D responded on 11 April 2008, expressing their shock at receiving the invoices. They said that at no time had they been made aware that any statutory works were planned for the tenement building. They stated that they would be contacting their solicitor and that they did not accept the legitimacy of the invoices. Their letter was passed to the Surveyors who responded on 7 May 2008.

11. The Surveyors replied that from their appointment on 8 June 2006 they had corresponded to the names and addresses given on the relevant statutory notices. They stated that the Council makes its best endeavours to establish the correct address of the owner of a property at the time a statutory notice is issued, either through information from the Registers of Scotland or by individuals contacting the Council direct to inform them of a change of address or ownership. The Surveyors considered that the process of issuing the statutory notices was carried out as required under the 1991 Act and they did not believe that there were grounds for withholding payment.

12. On 14 May 2008, Mr C and Ms D replied to say that the property had been registered at the Registers of Scotland in November 2004 and that they had informed the Council directly of the change of ownership. Returns for non-domestic rates had been received at their former address. They claimed that there had either been a systemic procedural failure or indeed negligence in ascertaining the current ownership of the former shop premises.

13. Final notices were issued by the Council on 15 May 2008 with a warning of legal action to recover the outstanding unpaid costs of the works. Mr C then wrote to the Director of Finance on 2 June 2008 stating that he and Ms D had at no time had any knowledge of the works being carried out and as such had not made any provision for their payment. He requested details of the Council's procedures regarding appeal against demands for payment.

14. In a reply of 10 June 2008 to the letter of 14 May 2008, a conservation surveyor in the Council's Corporate Property and Contingency Planning (Officer 1) responsible for liaising with the Surveyors on the contract stated:

'Your contact with [the Council] to inform change of ownership was presumably in connection with council tax. This Department does not have access to council tax records, these records are data protected and do not necessarily record the owner of the property but the person occupying.'

I do not agree that there has been a systematic failure or negligence in the part of the Council. I would, however, state there has been an error in the updated information not reaching [the Surveyors] which has had the 'knock on' effect of you inadvertently not receiving details of the notice at your forwarding address along with any subsequent correspondence.

With regard to ... the legitimacy of the owners invoices. I would advise you that they are issued in accordance with [the 1991 Act]. This states that the owner of the property at the time when the accounts are rendered is responsible for payment.'

15. The Council placed the three outstanding accounts in the hands of a debt recovery service who wrote to Mr C and Ms D on 25 June 2008. Mr C responded to Officer 1 on 1 July 2008, expressing his incredulity that the change in ownership had not been noted until the invoices were issued on 7 April 2008. He asked that the demands be put on hold until he heard from the Director of Finance on appeals procedures. The debt recovery service wrote again to Mr C and Ms D on 3, 5, 13, 15 and 23 July 2008. On 30 July 2008 they wrote stating that legal proceedings would be taken on 6 August 2008 if one of the three accounts (for £221.68) was not immediately paid in full.

16. Mr C and Ms D emailed a Member of the Scottish Parliament (the MSP). The MSP wrote to the Director of Finance on 17 July 2008 and followed this up on 6 August 2008. On that date, the Council's Head of Corporate Property and Contingency Planning (Officer 2) wrote to Mr C as the final stage in the Council's complaints procedures. He set out the background and stated that when the owners served with the statutory notices were unable to organise the necessary works, and following a request from an affected owner, his department was authorised on 7 December 2005 to arrange the works in default of the owners and to recover costs. The Surveyors were then appointed and

the contract, combined with other works, was awarded to a contractor. Officer 2 stated that the Council's records on ownership, which come from the Registers of Scotland, were updated on 1 November 2004 to show Mr C and Ms D as the owner with a correspondence address of Mr C's previous address. Correspondence issued by the Surveyors was sent to the address of the previous owner of the former shop premises. Officer 2 apologised for any confusion or inconvenience caused.

17. On further investigation, Officer 2 understood that the Surveyors used the address list issued with the original 2004 notices, still showing the previous ownership, and it was not the case of the Council records having been outdated. Irrespective of the omission, the Council was correctly authorised to carry out the works, and did so following a request from an affected owner. The notices were issued in October 2004. Officer 2 was of the view that these should have been disclosed by the previous owner and taken into account as part of Mr C's purchase of the property. He stated that the contractor would also have hand delivered information to the individual properties prior to starting works on site. Further, scaffolding was erected for a considerable period but, as far as Officer 2 was aware, no queries or correspondence was received by the Surveyors or the contractor from Mr C or Ms D during this period. While Officer 2 regretted that Mr C and Ms D were not included in correspondence, it did not affect their liability to maintain their property and, when unable to do so, to pay for any default works properly authorised. Officer 2 invited Mr C to discuss payment of liability with the Accounts Receivable Section Leader in the Finance Service. Officer 2 also signposted Mr C to the Ombudsman.

18. On 22 September 2008, the Council's Legal Section wrote to Mr C and Ms D stating that if the largest account (for £7,161.53) was not paid in seven days then court proceedings would be raised. Mr C contacted a Council solicitor on 29 September 2008 requesting a delay for a month to arrange the necessary funds. According to the Council, Mr C informed their solicitor that he was due funds from a client that would settle a large part of the debt.

19. In writing to the Ombudsman on 31 October 2008, Mr C and Ms D acknowledged that there was a crossover in information when they purchased the property. They felt that the Council had been totally negligent in communicating to the Surveyors who the current property owners were, especially given the amount of correspondence over a long period of time.

(a) The Council failed to serve Mr C and Ms D as part owners of the tenement with statutory notices issued on 13 October 2004; and (b) The Council failed to update their records on ownership and keep Mr C and Ms D informed of progress on the contract

20. The Council's issue of the statutory notices on 13 October 2004 post dated the purchase by Mr C and Ms D of the former shop. The Council say that they only became aware of the purchase from the Registers of Scotland after the sale was completed and the title registered in the new owners' names. That was on 1 November 2004, several weeks after the issue of the three statutory notices.

21. Since the non-domestic Valuation Roll records details of owners and occupiers, I sought information from the Assessor as to whether, before the notices were issued on 13 October 2004, it might have been possible to have ascertained from that source that there had been a change in ownership of the former shop and to have issued the notices to Mr C and Ms D. I instanced, in particular, the Scottish Assessors Association website which provides internet access to the council tax banding and non-domestic rates assessment of all properties in Scotland.

22. The Assessor responded on 24 June 2009. She informed me that whereas the Valuation Roll does record details of owners and occupiers, it does not require to be accurate for details of ownership. The Assessor does not actively update information unless advised in writing by interested parties. Once a year, 'Return of Information' forms are issued to all non-domestic properties and the Valuation Roll is updated with the returned information. The return rate on issued forms is approximately 60 percent. The Valuation Roll is probably at its most accurate immediately after the annual update exercise is completed.

23. The Assessor informed me that the Scottish Assessors Association website was only launched at the end of October 2004 and at that stage the launch had been 'soft' with no burst of publicity because of recognised gaps in the information published. The Assessor explained that the portal is now updated on a regular basis. This differs between Valuation authority areas but in the area of the Assessor, the portal is generally updated on a weekly basis. The Assessor stressed that the Scottish Assessors Association website lists the reputed proprietors and occupiers and not necessarily the bona fide details.

(a) Conclusion

24. The sale of the former shop was not registered by the Registers of Scotland until 1 November 2004. The Council could not have obtained information from that source, prior to the issue of the notices, that Mr C and Ms D were the new owners. As a commercial property, the premises were liable for non-domestic rates rather than for council tax. On the information, provided by the Assessor, it is also clear that in mid October 2004, it was not possible readily to identify from the Scottish Assessors Association website that a change in ownership had occurred. Since neither the previous owners nor Mr C and Ms D had directly informed Corporate Property and Contingency Planning of the change in ownership, the notices of 13 October 2004 in respect of the former shop were sent to the previous rather than current owner. Given the circumstances obtaining in this instance, I do not find it unreasonable for the Council to have issued the three notices to the former owner of the shop. I do not uphold this complaint.

25. It is a pity if the former owner did not return their copy of the notices to the Council or redirect them to Mr C and Ms D. That is not in itself a complaint against the Council.

(a) Recommendation

26. The Ombudsman recommends that the statutory notice intimation and relevant subsequent correspondence include an appropriate statement for the recipient to contact the Council to alert them to any change in ownership.

(b) Conclusion

27. Although the Council could, and should, have been aware directly from the Registers of Scotland in November 2004 that the ownership of the former shop had changed, that information clearly was not used by the Surveyors who wrote in error to the former owner. The consequence was that Mr C and Ms D received no direct communication from the Surveyors or the Council until early 2008. While various update letters may have been sent to the former owners, the Council and the Surveyors cannot in my view rely on a former owner having the courtesy to redirect correspondence.

28. I assume that Mr C and Ms D, who live in the city, visited their property when the works were underway. If that is the case then I am surprised that there is no record of them querying who commissioned the works. However, the Council, through their agents, had the ability after 1 November 2004 to

address correspondence correctly to Mr C and Ms D but did not do so. I uphold the complaint.

(b) Recommendations

29. The Ombudsman recommends that:

- (i) in the case of commercial properties included in statutory notices, Corporate Property and Contingency Planning institute a practice of checking with the Scottish Assessors Association website to ascertain whether there has been a pertinent recent change of ownership which would require them to update their ownership records before the issue of a statutory notice; and
- (ii) in the light of the failure to communicate with Mr C and Ms D and update them, the Council consider whether it is appropriate for them to levy the full administration charge.

(c) The Council failed to respond sympathetically to Mr C and Ms D's request to be given sufficient time to pay accounts for nearly £7,600 of which they had no prior forewarning

30. The accounts for Mr C and Ms D's proportionate share of the works were sent to Mr C's former address on 14 February and 20 March 2008 and were returned to the Director of Finance marked 'gone away'. At that stage, the Council checked the Scottish Assessors Association website and found that Mr C and Ms D's current address was given as the billing address for the former shop. The invoices were then reissued on 7 April 2008. As at 11 June 2009, Mr C and Ms D had not settled the accounts.

(c) Conclusion

31. While I recognise that Mr C and Ms D were shocked to receive without previous forewarning a bill for nearly £7,600, the complaint that I have investigated did not focus on the issue of liability for the costs of works. It is clear that the Council only became involved in the repair works because of default by all the owners to maintain the building in which the former shop is situated in a good state of repair. Mr C and Ms D effectively have now had more than a year to fund their share of the costs of the works required by the three notices. I do not uphold the complaint.

32. The Council have accepted the recommendations and have acted on them accordingly, including the waiving of the full administration charge.

Explanation of abbreviations used

Mr C and Mrs D	The complainants
The Council	The City of Edinburgh Council
The 1991 Act	The City of Edinburgh District Council Order Confirmation Act 1991
The Surveyors	A firm of surveyors appointed by the Council to administer the works in the statutory notices
The Assessor	The Assessor, Lothian Valuation Joint Board
Officer 1	A conservation surveyor in the Council's Corporate Property and Contingency Planning
The MSP	A Member of the Scottish Parliament
Officer 2	The Council's Head of Corporate Property and Contingency Planning

Relevant Provisions of the City of Edinburgh District Council Order Confirmation Act 1991

24(1) When from decay, or in consequence of storm or otherwise, the structure of part of any building or anything affixed to any building, or any wall or fence connected with, or pertinent to, a building (including any part thereof so formed or maintained as to allow satisfactory drainage of its surface or subsoil to a proper outfall) has become insecure, worn out, or damaged or is in need of repair, the Council may, by notice, require the owner of such building to execute any works necessary for securing, restoring or repairing such structure, fixture, wall or fence.

27(1) Where any building comprises a tenement the owner of every part of such building which is separately owned shall, for the purposes of this Part of this Order, be deemed to be the owner of such building, and notices shall, so far as is reasonably practicable, be served upon the owner of every such part accordingly.

28 Any person aggrieved by any requirement of a notice under this Part of this Order may appeal to the sheriff.