

Case 200802077: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Buildings; statutory notices to repair private property

Overview

The complainant (Mr C) raised concerns about The City of Edinburgh Council (the Council)'s administration of the accounts for works done under two statutory notices served on the owners of the building in which his flat is situated.

Specific complaint and conclusion

The complaint which has been investigated is that the Council unfairly altered to Mr C's detriment the list of recipients for works instructed by the Council as a result of statutory notices served by them (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendation to make.

Main Investigation Report

Introduction

1. The complainant (Mr C) lives in a first floor flat in a three storey tenement at the corner of two roads in Edinburgh. The ground floor of the building is occupied by commercial premises. The building was the subject of notices issued by The City of Edinburgh Council (the Council) under section 24(1) of the City of Edinburgh District Council Order Confirmation Act 1991 (the 1991 Act) notifying owners of a state of disrepair. When the owners did not voluntarily agree to undertake the works, the relevant committee authorised officers to arrange for their implementation. During the period of implementation of the works, a firm occupying one of the ground floor premises successfully applied to the Council for planning consent and building warrant to combine two ground floor premises into a larger office. The complaint from Mr C is not about the administration of the works by agents appointed by the Council, but rather with the apportionment of the costs of the works.

2. The complaint from Mr C which I have investigated is that the Council unfairly altered to Mr C's detriment the list of recipients for works instructed by the Council as a result of statutory notices served by them.

Legal Background

3. The Council have powers under the 1991 Act (see Annex 2) to serve notice on the owners of buildings that they are in a state of disrepair. Owners are encouraged to instruct the repairs themselves but where this does not happen, a second intimation is given that, if cause is not shown, the Council will proceed to instruct the works themselves with the addition of an administration fee. While the 1991 Act was specific to Edinburgh, powers available to the Council and other local authorities under the Civic Government (Scotland) Act 1982 until its repeal on 3 May 2005, allowed for a right of appeal to the sheriff about the apportionment of the costs of the works. That legislation was repealed with the Building (Scotland) Act 2003. Section 28 of the 1991 Act provides for an appeal against the notice but not against the apportionment of costs. Generally, the Council issue accounts on an equal share basis, but recognise that, particularly where there is a mixture of domestic and commercial properties, the liability for repairs might be differently distributed.

Investigation

4. Mr C provided me with a copy of his correspondence with the Council on the matter. I obtained the Council's comments on the complaint, inspected their files, and interviewed officers of the Council. 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 unfairly altered to Mr C's detriment the list of recipients for works instructed by the Council as a result of statutory notices served by them

5. Mr C has resided in a first floor tenement flat in Edinburgh since December 1983. On the ground floor there are a number of commercial premises, one of which was at one time previously occupied by a building society which had a separate strongroom. The premises were subsequently used as an accountant's office.

6. On 16 November 2004, Mr C and his wife were among 11 owners served with a statutory notice (Statutory Notice 1) under the 1991 Act to:

'Uplift and renew defective felt coverings to platform roof. Replace missing and badly broken slates to all slopes. Renew/replace rear centre zinc valley. Rebed/resecure chimney pots. Renew cement skew on right side (looking from rear). Reglaze skylight window. Renew corroded sections of guttering to front and rear elevations, test sound and running clear. Remove debris/silt from guttering.'

7. In reply to a letter from Mr C of 15 December 2004 regarding the notice, he was informed that the matter would be placed before the Council's Regulatory Committee. On 20 April 2005, the Council's Head of Corporate Property and Emergency Planning (Officer 1) informed Mr C that the Council had been authorised to undertake works. The Council had appointed a contractor. Mr C was also informed that the estimated cost of the works of £28,875 would be shared 11 ways (approximately £2,625 each).

8. The erection of scaffolding in September 2005 allowed for a more detailed inspection and additional essential repairs were noted. Officer 1 wrote to owners on 23 September 2005. He informed them that four matters were adjudged to come within the scope of the original notice. In respect of a fifth matter, a suspected outbreak of dry rot caused by defective gutters, it was

decided that this should be dealt with under a separate notice. Costs were at that time projected to be of the order of £5,250 per share.

9. A second statutory notice (Statutory Notice 2) in respect of the dry rot outbreak was issued to the 11 owners on 7 October 2005 to:

'Eradicate all wet and dry rot as evident in [a second floor flat] and into adjoining flats and roof timbers. Allow for renewal of all affected timber and plasterwork. Replace all defective cement skewes with lead watergates. Renew all defective zinc forming valleys, ridging. Take down to sound level and rebuild to original dimensions defective front chimney stack.'

10. Following a meeting of the Regulatory Committee on 21 December 2005, authorisation was given for the works specified in Statutory Notice 2 to be instructed by Council officers in default of the owners.

11. In March 2006, application was made to the Council for listed building consent in relation to the alteration of shop premises on the ground floor of the tenement to combine two ground floor premises into one. It was decided that planning consent was not required for the change. A building warrant was granted for the alterations on 31 March 2006. A site visit during August 2006, confirmed that the works to amalgamate the premises had been completed.

12. According to Mr C, the major part of the roof repairs in Statutory Notice 1 were completed in January or February 2006.

13. Because of high staff workloads at the time, a decision had been made to use private surveying firms to administer statutory notice contracts on behalf of the Council. Responsibility for administering the Statutory Notice 2 contract was passed to a firm of surveyors (the Surveyors). They advised owners of a start date for those works of May 2006. The work was combined with a third notice affecting another eight owners in an adjoining tenement.

14. Following the completion of the works, the Surveyors wrote to owners on 11 October 2006 informing them that the final account for Statutory Notice 1 was £65,965.09. After the addition of the Council's administrative charge and Value Added Tax, each owner's share would be approximately £7,055.

15. Accounts for the dry rot work instructed under Statutory Notice 2 were issued on 30 November 2006 with each of the 11 owners due to pay £212.09 of the total inclusive cost of £2,342.78.

16. The main contract accounts for Statutory Notice 1 were issued on 22 February 2007 with each of the 11 owners being billed £7,053.76 of the total inclusive cost of £77,591.36.

17. Mr C paid his respective shares of the costs of the work undertaken in respect of Statutory Notice 1 and Statutory Notice 2 on 9 March 2007.

18. On 13 September 2007 letters were sent to Mr C and nine other owners, advising them that it had come to the Council's attention that as one of the ground floor premises did not exist the overall cost, therefore, had to be shared ten ways (rather than 11). The Council sought additional sums from Mr C and his fellow owners of £705.38 in respect of the Statutory Notice 1 works and £21.30 in respect of the Statutory Notice 2 works.

19. Letters of representation from some of the owners were sent to the Council and acknowledged by them on 27 September 2007. The Council thereafter investigated the matter. They confirmed by letter of 14 February 2008 that there was indeed a ground floor store property, and that property (see paragraph 5) would be invoiced. The letter added that a further visit had been paid to the property and that this had disclosed that another ground floor property no longer existed, having been merged with the next door property, thus attracting one share (rather than two). Amended accounts were issued holding the owner of the ground floor accountancy office responsible for a 1/10th share rather than 2/11th in respect of the two statutory notice accounts.

20. Mr C wrote to the Council on 8 March 2008 stating that he intended to withhold payment in respect to the additional invoices raised. In reply of 19 March 2008, a Council senior conservation surveyor (Officer 2) forwarded a copy of the Council's advice booklet 'About Your Statutory Notice: An Advisory Guide'. Officer 1 maintained that the allocation of costs had been issued in line with the current legislation and that the Council would be pursuing for recovery of costs.

21. Mr C responded in letters of 13 and 27 March 2008 and spoke with Officer 1 on 8 April 2008. On 9 April 2008, Officer 1 provided Mr C with details

of three related sheriff court cases from 1988, 1994 and 2004 in which apportionment of costs had been an issue. He advised Mr C of the Council's complaints process.

22. A further invoice was sent for the outstanding balance of £705.37 on 10 April 2008 warning of court proceedings if it was not paid within 14 days.

23. Mr C stated that he and other residents reluctantly paid the extra amounts demanded. He decided to submit a complaint to the Council's Customer Care on 29 April 2008. His complaint was acknowledged the same day. On 31 July 2008, Officer 1 wrote reaffirming his department's earlier correspondence. He expressed his regret for any inconvenience caused in the re-issuing of accounts. Mr C remained unhappy and wrote further to Officer 1 on 28 August 2008. In his final response of 17 September 2008, Officer 1 stated:

'I would confirm that under the terms of [the 1991 Act], the Council recovers costs from the owners present at the time of billing on an equal shares basis. I do accept that the number of properties has decreased since the Notice was originally issued but the Council can only recover from the current ownership as previously advised. Consequently, as the Council is obliged to recover costs, the revised invoices as issued will stand.

This does not, however, preclude any right available to owners to subsequently privately reallocate costs under Title or any other right that they may have.

I would apologise for the time taken to respond to your letter of complaint logged with our Customer Care on the 29 April 2008. The points raised had been previously dealt with in our previous correspondence of the 14 February, 3 March, 19 March and the 9 April 2008.'

24. Officer 1 signposted Mr C to the Ombudsman. Before approaching the Ombudsman, Mr C sought clarification of the planning consents and building warrants granted in respect of the amalgamation of the two ground floor commercial premises and the information at paragraph 11 was provided to him by Officer 2 on 14 October 2008.

25. Mr C then wrote to the Ombudsman on 26 October 2008. He stated that the owner of the amalgamated ground floor premises had not notified other owners of his proposals nor had he made representations to the Council before the original invoices were sent out and settled by Mr C and other residents. He maintained that had the accounts for the initial contract been issued in a more timely manner following the completion of works, the issue of the amalgamation of the commercial premises would not have arisen and the reduction from 11 to ten shares would not have been an issue. Mr C considered that the Council's behaviour had been unacceptable.

Conclusion

26. I can readily see why Mr C feels aggrieved. Firstly, the overall cost of the project escalated nearly three times from the projected cost at the outset and secondly, he perceives that the goal posts changed with the costs being apportioned ten ways rather than 11. His complaint to the Ombudsman is only about the second point.

27. The Council informed me that, where they have a full mandate to do so on behalf of all the owners, they can issue bills according to the distribution of liability in the titles. That was not the case here. Statutory Notice 1 and Statutory Notice 2 were correctly issued and the accounts were eventually issued in equal shares to the owners of the ten properties that existed after all the works were completed.

28. While the major part of the repair works may well have been completed in February 2006, it was a full year until 22 February 2007 before the accounts for the works undertaken under the three statutory notices were issued. By that time, two commercial premises had been amalgamated into one unit. In commenting on the draft report, Mr C contended that at the time the Statutory Notice 1 works were completed, 11 properties existed and, had the bills been issued immediately after completion, his share would have been less. I understand Mr C's position but consider that, when there were ongoing works, it was reasonable for the Council to await overall completion and coordinate the issue of final accounts to those owners affected.

29. Mr C has not informed me what his title says in respect of his proportion of liability for repair. It is not inconceivable that it might not be a one tenth share. Mr C and his fellow owners may, therefore, have the ability to seek redress from the owner of the amalgamated ground floor premises or anyone else whom they

consider has not paid the share they are obliged to pay under their title deeds. That is not a matter in which the Council should be interested. I do not uphold the complaint.

Recommendations

30. The Ombudsman has no recommendations to make.

Explanation of abbreviations used

Mr C	The complainant
The Council	The City of Edinburgh Council
The 1991 Act	The City of Edinburgh District Council Order Confirmation Act 1991
Statutory Notice 1	A statutory notice under section 24(1) of 1991 Act on 16 November 2004
Officer 1	The Council's Head of Corporate Property and Emergency Planning
Statutory Notice 2	A statutory notice under section 24(1) of 1991 Act on 7 October 2005
The Surveyors	A firm of surveyors appointed by the Council to administer the contract for works required by the two statutory notices
Officer 2	A Council senior conservation surveyor

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.

27(2) Every owner of every such part of such building shall be liable in equal shares to the Council for any expense incurred by the Council in executing any works in pursuance of this Part of this Order but nothing in this section shall affect any right competent to any owner of any part of such building, under the conditions of his title or otherwise, to recover from the owner of any other part the amount, or any part thereof, paid by, or recovered from, him.

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