

Mr Jim Grant
Head of Development Services
The Moray Council
PO Box 6760
Elgin
Moray
IV30 9BX

16th November 2016

Dear Mr Grant

Your ref: Complaint Number 8728
Finderne Community Council – Blervie House, Rafford

Further to your letter of 25th October 2016 on the above subject we have now had time to review your response in detail.

As a Community Council we are profoundly disappointed and dissatisfied with both The Moray Council's handling of the initial issues and the complaint we submitted. The residents of Rafford have been badly let down by officials of the Council who we consider have patently failed to carry out their duties in accordance with legislation, council policies and common fairness.

On the access issue, we will not waste time exercising all of our arguments again but feel the contradictory position of The Moray Council on the locked gate is worthy of note. You state that TMC asked Mr Thompson to remove the lock, a point we were not previously made aware of, but that he "refused citing privacy". The fact that you asked for the lock to be removed clearly indicates that you believed that Mr Thompson was in breach of the Land Reform (Scotland) Act, Section 14. You then go on to state that TMC's legal team's advice was that if legal action was taken to enforce the removal of the lock on the gate you would most likely lose any subsequent court case. The implied suggestion that the only stages of enforcement action available on this issue are either a polite request to remove the padlock, or legal proceedings to the Sheriff Court, simply beggars' belief.

Likewise on the planning requirement for the B9010 we will not repeat our previous arguments but again your response provides additional insights into the handling of this case which your officials have not previously disclosed.

In a meeting I had personally with Mr Thompson he said that the planning officer had stated that a planning approval would normally be required but in this case he was happy to let it pass.

In the first formal response from TMC you now state that the planning department's response to our question to Ken Kennedy was in relation to the fence erected in the woods and not along the road. The correspondence between myself and Mr Kennedy was quite explicit in regard to the fencing in question being along the B9010 and, in complete fairness to him, he was simply the conduit for the advice as he had clearly told the representatives of the FCC that he could not comment himself on a planning issue. The "no planning required" advice came from the planning department, not Mr Kennedy.

In your latest response you advise us that in actual fact TMC did send a letter to Mr Thompson requesting a submission of a retrospective planning application but that he had refused.

So the record of handling this case goes from “**permission is required but don’t bother**” through “**permission isn’t required at all**” and finally ends with “**we asked for a retrospective planning application but the landowner chose not to submit one**”. We are left wondering whether any other residents of Finderne would have been allowed to choose whether or not to submit a retrospective planning application where one was justified?

We also note that in terms of the investigation into our complaint you chose to delegate the responsibility to Beverly Smith (Manager, Development Management). Given that Ms Smith was directly involved in the handling of the case, and referenced for contact by Mr Kennedy for issues around the planning aspects, we would respectfully suggest that it would have helped the transparency of the process if the investigation had been conducted by someone with responsibilities more removed from the planning department.

It is our considered view that the points highlighted above, along with the substantial evidence of mishandling previously submitted, constitute a strong case for submission to the Scottish Public Services Ombudsman.

Whilst we believe that the SPSO would find in favour of our case we have, after very careful consideration, decided not to submit a complaint for their review at this time. Our reasons for this are simple. The financial situation of TMC is widely known and we have concluded that, even with a SPSO ruling in our favour, the Moray Council would now be forced to take legal proceedings against Mr Thompson if anything was to be put right. The opportunity for TMC to use its enforcement powers in a sensible, inexpensive and straightforward way has been lost. Had TMC officials done their jobs properly, at the correct time, the situation would never have escalated to this situation, but they didn’t. If the FCC push this issue to the SPSO we would knowingly be advocating the allocation of finite resources to correct a wrong doing by an individual who clearly has no interest in the local community. The council tax payers of Moray in general, and of Finderne in particular, deserve better use of their finances.

We will convey this decision to the Finderne community at our next meeting, on 28th November, and then post all relevant correspondence and documentation onto our web site www.findernecc.wordpress.com .

In closing I would reiterate my previous statement that the Finderne Community Council wishes to work closely, and positively, with The Moray Council for the betterment of the residents of Finderne. This has not been a good start for our newly established Community Council. We sincerely hope it will improve in the future as we trust you do, too?

For and on behalf of the Finderne Community Council

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Higgs', with a stylized flourish at the end.

Brian Higgs - Chairperson