Aarhus Doc 9

Scottish Public Services Ombudsman
4 Melville Street
Edinburgh EH3 7NS

Moray Feu Traffic Sub-Committee
per Alistair MacIntosh
17 Great Stuart St
Edinburgh EH3 7TP
Tel: 0131 225 3775

8th June 2010

Scottish Public Services Ombudsman

Dear Sir,

Consultation on Trams Scheme - Complaint against Edinburgh City Council

Following advice from your office, we have now completed the Formal Complaints procedure with the City of Edinburgh Council (CEC), originally advised to us as a 3 level process, but since truncated by CEC. This truncation has had the unfortunate effect of curtailing our opportunity to pursue and perhaps resolve further points of contention which illustrate our claim of maladministration.

The Moray Feu Traffic Sub-Committee (the Sub-Committee) was constituted in 2008 after it became known that the CEC intended the temporary closure of Shandwick Place - and the consequent diversion of all general traffic through the residential Moray Feu - to be made permanent when the tram system became operational. A principal factor driving the formation of the sub-committee was the unsatisfactory responses that residents of the Feu were receiving from CEC officials (including their wholly owned contractor **tie Ltd**) to letters of concern over the CEC's intention, particularly in view of the large scale traffic flows already being experienced by the temporary closure of Shandwick Place.

Unfortunately the Sub-Committee has experienced the same resistant response to it's numerous attempts to engage with CEC officials in the meaningful pursuit of alternative traffic routing measures to reduce these traffic flows and their environmental impact. In these attempts, all initiatives have come from residents (and been rejected by the CEC), but none from CEC officials. Moreover the only measure partially conceded, resulted from action by our ward Councillors following representations made by the Sub-Committee. However this partial concession (re-opening the alternative route eastbound through Charlotte Square) is unlikely to be effective without appropriate back-up measures (which have been strenuously resisted) to force a significant proportion of traffic to use that route.

After two years of unrewarded effort, the Sub-Committee has come to the conclusion that the CEC has not in fact been engaged in meaningful consultation with residents, but instead has been consistently defending a preconceived plan and policy to facilitate the introduction of the tram scheme by removing the main east/west city centre traffic route from Princes Street/Shandwick Place, to Queen Street and the residential Moray Feu. Throughout this process we have been exclusively directed to CEC officials responsible for the tram scheme who have it's delivery as their over-riding priority, and to no one with responsibility for the preservation of residential amenity.

The sub-committee therefore considers that failure to engage in a meaningful and proactive manner with residents who have proper concerns over serious damage to their residential environment constitutes maladministration, and potentially does not comply with the terms of the EU Aarhus Convention.

Attached is the two stage correspondence comprising the Formal Complaint process with the CEC which was initiated on 28th January 2010. In addition, we comment below on the significance of each of the illustrative examples in support of our contention.

1. Parliamentary Inquiry Misled

Despite the clearly written submission by the chairman of the Moray Feuars Main Committee to the 2005 Parliamentary Inquiry, which pointed out that the Council's own plans showed no provision on Shandwick Place for general traffic, CEC officials continue to maintain that the necessity for it's permanent closure was discovered only during the detailed design stage. Exposure of the fact that all non-public traffic was to be displaced from the tram route into residential areas such as the historic Moray Feu could well have altered the parliamentary vote to proceed with the tram scheme.

2 Traffic Count Refused

The CEC's first response justifying it's refusal is contradicted by the second which includes the admission that a baseline traffic survey was indeed carried out by **tie Ltd** prior to the closure of Shandwick Place for preparatory tram works. If this had been revealed when requested by the Moray Feu Main Committee then the committee would not have gone to the expense of having a separate professional survey conducted. Moreover, following the closure, the survey for **tie Ltd** was carried out only after a further in-house survey by LMF, and after the traffic situation had been complicated by the preparations for the Princes Street closure, thus no longer replicating the intended permanent arrangement.

3 Residents Misled on TRO Opportunity

The Sub-Committee has formed the view that the CEC's repeated referral to the TRO process as the formal opportunity to object or request changes, in the full knowledge that it planned to avoid a public hearing, was merely a means of deflecting residents. The Sub-Committee holds to the view that, since the issue concerns the residential environment, an evasive tactic such as this is probably contrary to the requirements of the EU Aarhus Convention. Moreover, in view of the CEC actions highlighted under (1), the right to withhold a public hearing on this traffic displacement is questioned.

4 Residents Must Wait 6 Years

In this instance the Sub-Committee is pleased that the dialogue afforded by the complaints procedure has produce the response that traffic displacement into the Moray Feu traffic will not be treated as a 'wider area' issue as seemed apparent from the report submitted to the Transport, Infrastructure and Environment Committee, but will be dealt with under TRO2 as a potential variation matter.

5 No Action on Air Quality Monitoring Requests

Having previously omitted the Moray Feu from it's Air Quality Management Area (2009) [see figure 1], the CEC has now revealed that it commenced measurement of NO2 levels within the Feu in July 2009. Data have since been exchanged between CEC and the Sub-Committee, which are not only in close agreement, but appear to be in excess of National and EU limits, and indeed support the contention by residents that the levels of pollution now being experienced would be unacceptable on a permanent basis.

6 Tram Rails do not Preclude Bus Manoeuvre

The importance of this issue is the claim by CEC officials that the tram arrangement will not allow Dean Bridge bound buses to revert to South Charlotte Street as the entry and exit connection into Princes Street. This therefore prevents the re-closure of the Queensferry Street bus gate which would otherwise permit the full re-opening of the non-residential Charlotte Square as the relief route which it formerly provided parallel to the residential Moray Feu.

Again Feuars have been faced with an uphill battle against the multiple objections raised, none of which we believe would be insurmountable (some in fact are trivial) if the will existed within the CEC to adequately prioritise the residential amenity of the Feu. This is particularly evident in the CEC's final response which acknowledges for the first time that the retention of

the bus gate as a mechanism for reducing traffic in Charlotte Square has been taken forward within the design for the tram.

7 HGV Restriction Denied

In this instance the argument just dries up with the CEC's final response failing acknowledge the points made by the sub-committee. This response patently falls short of that expected in meaningful dialogue or public consultation.

8 Road Constrictions Denied

Here a proposal by the Feuars for a self-enforcing restriction on HGVs as requested by the police, (and of a form proposed for use under the 2003 Central Edinburgh Traffic Management plan (CETM) by CEC officials) is turned down using a variety of insubstantial objections. 'Traffic delays, public access, and the discouragement of shoppers', are unrealistic consequences of a ban on the passage of HGVs through the Feu. Such vehicles would, as they did previously, use the non-residential non-cobbled Charlotte Square route, or avoid the city centre (an objective of CETM). As the CEC pointed out to the 2003 CETM hearing, "In any event, the [Great Stuart Street] route is little used by heavy vehicles". Here again, as one objection is countered another is raised.

9 Noise Levels Ignored

Once again the CEC wrongly infers that the limited reopening of Charlotte Square was it's own initiative. Figure 1 was prepared some time ago for Moray Feu residents and shows the omission of the Feu from the noise as well as the pollution Management Areas. As the text makes clear, essential data on both noise and pollution data have been withheld from the sub-committee..

The issue of overnight traffic noise in the Feu is of particular concern to residents, but has not been responded to by the CEC. In fact, without prior indication, the CEC now proposes in TRO1 to discontinue the use of Princes Street overnight by general traffic. This was a measure introduced within CETM at the request of the Hearing Reporters in order to reduce overnight noise disturbance of residents. The rational of an under used Princes Street which has permitted this would remain unchanged post trams.

10 Pedestrian Safety Ignored

In this instance the complaints procedure has succeeded in securing qualified encouragement that action may now be taken on this request which was made by Feuars over two years ago.

It is fully understood that decisions made by the CEC against the interests of residents are not an issue for the Ombudsman. However it has been necessary to present these examples in order to illustrate how residents have been excluded from meaningful participation in the process by which their living environment has been already, and could be permanently, profoundly affected. The accusation of maladministration concerns that exclusion.

Yours Sincerely,

Alistair MacIntosh
For the Moray Feu Traffic Sub-Committee

SPSO Scottish Public Services Ombudsman

4 Melville Street
Edinburgh
EH3 7NS
Tel **0800 377 7330**
Fax **0800 377 7331**
Web **www.spso.org.uk**

27 August 2010

Our ref: 200903349

CONFIDENTIAL
Mr Alistair MacIntosh
Top flat
17 Great Stuart Street
EDINBURGH
EH3 7TP

Dear Mr MacIntosh

Complaint against The City of Edinburgh Council

I refer to my letter of 5 August 2010. I am sorry not to have been able to get back to you before now. In the intervening period I submitted an investigation plan, in the absence ion leave of my manager, to our Director of Complaints and Investigations on 13 August 2010. He agreed with my suggestion that the investigation of your complaint should culminate in a public report.

My investigation plan identified information that I would need from the Council. I enclose for your information a copy of my letter of today's date to the Chief Executive, with an amended background note incorporating the points you suggested in your letter of 4 August 2010.

I will keep you updated on the progress of my investigation of your complaint.

Yours sincerely

Brian Thomson
Complaints Reviewer

DD telephone: 0131 240 2961
Email: BThomson@spso.org.uk

Enc Letter + Summary of Background

Investigations by the Scottish Public Services Ombudsman are to be carried out in private, in terms of the Scottish Public Services Ombudsman Act 2002. Accordingly, this correspondence must not be made publicly available. This does not affect the rights of recipients to seek legal advice in relation to this complaint. Where appropriate, recipients are also reminded of their obligations under the Data Protection Act 1998 in relation to the processing of personal and sensitive personal data.