

CASE SUMMARY

Complaint against the Lands Department for permitting the developer of small houses to remove a footpath without prior consultation with the affected residents.

The Complaint

In September 1995 the complainant and other residents of a village in the N.T. raised objection to the removal of the long existing footpath close to their houses. They were informed in writing by the District Lands Officer (DLO) in October 1995 that the developer of the neighbouring small houses had been advised not to enter onto the footpath to undertake site formation works as it stood on Government land. The DLO also stated that there was no question of his Office giving consent to encroachment by the private development. However, in October 1997, the complainant noticed that works was about to be carried out at the subject site to remove the footpath. The complainant felt aggrieved that contrary to the DLO commitment, the developer was given permission to remove the footpath without prior consultation with the affected residents and therefore lodged a complaint with The Ombudsman.

Findings and Conclusion

2. Upon enquiry, the Director of Lands gave the following explanations-
 - (a) When the development of a small house next to the footpath was proposed in December 1992, there was a narrow strip of Government land between the existing footpath and the proposed lot on the site plan. As there was no objection upon posting of the notice of the development, the application was granted in April 1993. However, when the DLO conducted a

ground survey in May 1996, it was discovered that the situation was different from the plan in that the lot actually included the strip of Government land due to an insufficiency of land. As a result, the subject footpath will be blocked by the construction. However, there are alternative accesses to residents in the locality.

- (b) When DLO' s letter was issued stating that the footpath would not be removed was based on the then known situation as the site plan did not include the access at all, which indicated that it was not an established access and was not constructed before the application was granted.

3. Upon investigation, this Office has the following observations-

- (a) The reason that no objection was received towards the proposed small houses development in 1992 was because the site plan did not indicate that the development would encroach upon the footpath.
- (b) It is a fact that in October 1995, the DLO personally wrote and gave assurances that the footpath in question stood on Government land and that his Office would not give consent to the encroachment by the proposed development. The complainant has a reasonable expectation that the DLO will honour his words.
- (c) Further, there were on record five written complaints against the removal of the footpath which reflected the strong sentiments of the neighbouring residents of the proposed development as it would seriously affect ease of access afforded by the footpath as a short cut. As such, it would have been prudent for DLO to have checked and visited the site and not just relying on the site plan before coming to a decision and giving assurances and commitment to the complainants in writing.

- (d) It is inapparent from DLO's records that his Office had taken follow-up actions to pursue on the boundary rectification of the small house development so as to forestall encroachment of the development onto the footpath. In 1997, DLO approved the grantees' site formation (amendment) plan. This act effectively gave permission to remove part of the footpath since, according to this plan, the lot boundaries actually cover it. However, there was no specific plan to re-provision the footpath.

4. This Office is of the view that the DLO had not taken into account the strong objections and reasonable concerns of the affected residents which his Office was fully aware since 1995. The footpath is being used as the more levelled and direct routing, and it takes its way directly to the pick-up point of local transport and refuse collection. Although the DLO explained that it had been misled by the site plan, it is the responsibility of the DLO to investigate into the complaints before making public assurances and commitments on the status of the land in question and the issue of encroachment of a long existing footpath. The DLO should have taken remedial action on boundary rectification and discussed with the affected residents with a view to resolving the matter before giving final approval to the site development. All points considered, The Ombudsman concludes that this complaint is substantiated.

Recommendation

5. The Ombudsman recommends the Director of Lands to take urgent and vigorous steps to remedy the situation in order to enable the footpath to remain or re-provision the footpath in consultation with the complainant and the affected residents.

Response from the Director of Lands

6. The Director of Lands considers that the DLO has been partially responsible in causing the problem by (i) initially relying on inaccurate plans; and (ii) not checking the situation on the ground when providing the assurance

in October 1995. However, it is considered that the local residents have also been a contributing factor to the problem because of their unauthorised actions in diverting the footpath in the first place. He maintained that the footpath has been altered in recent years. However, he has accepted the recommendation.

Final Remarks

7. The Ombudsman has carefully considered the Director of Land 's comments. According to Lands D' s own records, the footpath appeared in the photographs taken on 18 May 1995. Hence, quite apart from the complainant' s assertion that it was in existence for over 20 years, the point remains that this footpath should be held to be antecedent to the events of October 1995 when DLO gave the assurance on the retention of the footpath. Once the assurance was given, the complainant and the affected residents have a legitimate expectation of the footpath to remain as it is.

8. The Ombudsman is of the opinion that there is no justifiable grounds to change the conclusion of this Report. He is pleased to note that the DLO has followed up on this Office' s recommendation by setting in motion the rectification of the lot boundaries in order to enable the subject footpath to remain intact.

Office of The Ombudsman

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