



**Brent**

**Highways Committee**  
10 December 2013

**Report from the Head of  
Transportation**

For Information

Wards Affected:  
All

**Crossover Policy - Ombudsman's Report outcomes and  
policy change**

**1.0 Summary**

1.1 This report informs the Committee of the findings of a Local Government Ombudsman investigation into a complaint about an application for a vehicle crossover. It outlines the complaint and details the findings by the Ombudsman. It notes how the Council has responded to those findings, including the recommendation that the Council adopts a revised vehicle crossover policy.

**2.0 Recommendations**

2.1 That the Committee notes the recommendations by the Local Government Ombudsman as a result of an investigation into a complaint against The London Borough of Brent in respect of a vehicle crossover application.

2.2 That the Committee adopts the revised Vehicle Crossover Policy presented in Appendix A, along with the revised Guidance Notes for Footway Crossovers in Appendix B

**3.0 Background to the Complaint**

3.1 The Council has received a Local Government Ombudsman's report dated 12<sup>th</sup> September regarding complaint no 12 014 714, which is about an application for a vehicle crossover from the highway.

3.2 The Complainant had planning permission granted on appeal by a Planning Inspector for a crossover to his driveway. The Planning Inspector concluded that "*because of the appeal dwelling's unique location, the adverse effects normally associated with vehicular crossovers traversing grass verges would not occur in this case*", and "*to allow the appeal does not undermine the Council's ability to apply its policies effectively*".

- 3.3 The Council then refused an application to construct the crossover under its powers as the Highway Authority, because *“Where an application for a crossover is proposed across a highway verge that is greater than 3 metres in width or any other grassed highway amenity area, it will be refused because of the adverse effect this can have on the appearance of the street”*.
- 3.4 The Council refused the complainant’s appeal against the highways decision.
- 3.5 The Council’s crossover policy only allows for an appeal on the grounds the application has not been processed in accordance with the policy.

#### **4.0 The Ombudsman’s Investigation**

- 4.1 As part of the investigation, the Ombudsman considered the complaint, the copy correspondence provided by the complainant, and the comments and documents the Council provided; and discussed the issues with the complainant.
- 4.3 The Ombudsman discusses whether the Council as the Highway Authority determining a crossover application can come to a different conclusion to a separate decision taken as the Planning Authority. The Ombudsman allows there must be the possibility of different decisions; however it would be reasonable to expect some coordination between the two roles. The Ombudsman says

*“In an extreme case a Highways Authority might ignore the planning consultation entirely and then use its objections to refuse an application for a crossover later. I think this cannot be right, but whether it would be lawful is a matter the courts would have to decide.”*

In any case, the Ombudsman’s finding is that the grounds on which the Council refused the highway crossover application in this case were actually the same grounds that the Planning Inspector had rejected.

In terms of communication

- The Ombudsman discusses the decision to refuse the Highways application, and whether the Planning Inspector’s decision was taken into account. Although Officers remember taking the decision into account, there is no documentary evidence of this and it was not communicated to the complainant
- During the investigation the Council raised the need to consider is “the need to prevent damage to a footway or verge” under Highways Act; this had not previously been communicated to the Complainant.

#### **5.0 The Ombudsman’s Findings**

- 5.1 The Ombudsman found *“maladministration causing injustice”* because the Council:
- a) **Fettered its discretion:** The Ombudsman’s view was that *“the Council’s policy allowed no decision other than refusal, about a request for a crossover across a grass verge wider than 3 metres. There was no provision to exercise discretion or consider an appeal on grounds of exceptional circumstances of the case”*; and

b) **Failed to communicate its decision properly:** during the Ombudsman's investigation "*the Council gave new reasons for refusing the Complainant's request that it had not previously given to him in its decision*".

5.2 The Ombudsman found that this caused injustice because "*...these faults caused Mr X [ the complainant] justifiable annoyance and uncertainty and caused him to take time and trouble to try to get a proper decision with reasons. That difficulty should have been avoided*"

## 6.0 The Ombudsman's Recommended Remedy

6.1 Having found "maladministration causing injustice", Ombudsman's recommended remedies are:

a) "*The Council has agreed to review its Domestic Vehicle Footway Crossover Policy to provide a right of appeal on the grounds of the exceptional circumstances and facts of a case; and not only procedural irregularity*"

and recommends that the Council should also:

b) "*set aside its decision on Mr X's application for a crossover and make a fresh decision considering all the facts and arguments (including the Planning Inspector's decision) that have been set out in his complaint and my report. The Council should give full reasons in writing for how and why it reaches the decision it does; and,*

c) *pay Mr X £300 to recognise the injustice caused to him through the faults I [the Ombudsman] have identified in this report*

## 7.0 The Council's response

7.1 **Review the Domestic Vehicle Footway Crossover Policy** - Officers do not entirely concur with the Ombudsman's conclusion that the Council's policy "*allowed no decision other than refusal about a request for a crossover across a grass verge wider than 3 metres*", because even though discretion was not stated in the policy, in practice officers do exercise discretion. The Council sent the Ombudsman examples of recent decisions where discretion was exercised to allow exceptions to the policy where there were justifying circumstances, which was acknowledged in the report by the Ombudsman. The Council's reply to the LGO is attached as **Appendix C**. Nevertheless, officers agree that for the sake of transparency and consistency that the wording of the Domestic Vehicle Footway Crossover Policy should be changed. A proposed revised policy forms **Appendix A** of this report.

7.2 **Set aside its decision on Mr X's application for a crossover and make a fresh decision** – A new application was received by the applicant on 25<sup>th</sup> October 2013. This application will be reconsidered as a new application and a decision will be reported in writing to the applicant with full details of the reasons for the decision.

7.3 **Pay the Complainant £300 to recognise the injustice caused to him** – this payment has been made as per the Ombudsman's decision.

7.4 In addition to the above, and in accordance with standard procedure where an Ombudsman finds against a local authority, a notice was placed in the Wembley

Observer and Brent & Kilburn Times on 26<sup>th</sup> September 2013 informing the public of the outcome of the Ombudsman's report.

## **8.0 Financial Implications**

8.1 There are no financial implications to this report, apart from the £300 the Council has paid to the complainant, on the recommendation of the LGO. This cost has been paid through the Transportation Service revenue budget.

## **9.0 Legal Implications**

- 9.1 The LGO investigates complaints about 'maladministration' and 'service failure'. In the report, the LGO has used the word "fault" to refer to these. If there has been fault, the LGO considers whether it has caused an injustice and if it has, may suggest a remedy. **(Local Government Act 1974, sections 26(1) and 26A(1))**
- 9.2 The LGO cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. The LGO must consider whether there was fault in the way the decision was reached. **(Local Government Act 1974, section 34(3))**
- 9.3 The LGO expects someone to appeal to a court, tribunal or government minister if they have a right to. However, they may decide to investigate a complaint if they consider it would be unreasonable for a person to have to do so. **(Local Government Act 1974, section 26(6))**
- 9.4 Where a local planning authority refuses an application for planning permission the applicant may appeal by notice to the Secretary of State<sup>1</sup>. Usually the appeal will be decided by a Planning Inspector acting on behalf of the responsible Government minister<sup>1</sup> **(Town and Country Planning Act 1990 s.78)**
- 9.5 Any person may ask a highway authority to construct a vehicle crossing over a footway or verge in the highway. The highway authority may approve, or reject the application, or propose alternative works. In making this decision the highway authority must have regard to the need to prevent damage to a footway or verge **(Highways Act 1980 s184(11) & s184(5))**

## **10.0 Diversity Implications**

- 10.1 The public sector duty set out at Section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not share that protected characteristic. Members must consider the effect that implementing a particular policy will have in relation to equality before making a decision. There is no prescribed manner in which the equality duty must be exercised. However, the council must have an adequate evidence base for its decision making.
- 10.2 An Equalities Assessment of the revised Crossover Policy has been prepared. As stated, officers have previously exercised discretion in their application of the policy, most notably where disabled applicants are unable to meet requirements for soft

landscaping within their proposed parking areas. In these circumstances officers have previously relaxed the policy requirements to enable a crossover to be provided for disabled applicants.

- 10.3 The amendment of the policy states that discretion will be applied in exceptional circumstances. This will in future inform applicants that have specific needs that discretion will be applied, and could therefore assist disabled applicants to better understand how the Council assesses applications and exercises its discretion.

### **Appendices**

- A- Domestic Vehicle Footway Crossover Policy
- B- Guidance Notes for Footway Crossovers
- C- Council's reply to LGO

### **Background Papers**

- Local Government Ombudsman Report on an investigation into complaint no 12 014 714 against The London Borough of Brent 12 September 2013
- Application Form – Domestic Vehicle Crossover
- Local Government Ombudsman letter to LB Brent dated 12 Sept 2013

### **Contact Officers**

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