

Doug Thorpe  
Investigator  
The Commissioner for Local Administration in England  
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London  
SW1P 4QP

Date: 15 August 2013

Your ref: 12 014 714

Complaint reference: CMPT027455/11 IC759093

Dear Mr Thorpe

**Complaint by Mr A Khokhar, 885 Harrow Road, Wembley, Middlesex HA0 2RH**

Thank you for your letter and copy of a draft report dated 26 July 2013.

The Council has one main comment to make in response to the Ombudsman's key concern, outlined for example in sections 28 and 48 of the draft report, that the Council's Domestic Vehicle Footway Crossover Policy endorses a fettering of discretion and does not allow for an appeal on the grounds of exceptional circumstances that would justify an exception to be made to the policy. The Council accepts that the wording of the appeal section of the policy gives the impression that discretion is routinely fettered and that exceptional circumstances are not taken into account. The Council accepts the recommendation in section 52(a) of the draft report that the wording of the appeal section of the policy should be revised.

The Council wishes to emphasise, however, that Transportation officers regularly exercise discretion in relation to the provisions of the crossover policy on the grounds of exceptional circumstances. Typically, this occurs within the context of ongoing discussion and negotiation with applicants. As I mentioned in previous correspondence, this is encompassed by the section of the policy that states 'consideration should always be given to whether any concerns/problems can be overcome by the highway authority exercising its power to modify the request or propose alternative works. Each case must always be considered on its own merits.' I will briefly summarise in tabular form four anonymised recent cases where this has occurred:

| Case number | Date of application | Reasons why the application did not conform to the provisions of the crossover policy                                      | Reasons for acceptance   |
|-------------|---------------------|--|--|
| 1           | 25 November 2011    | The crossover policy states that 50% of the front area of the property should have 'soft' landscaping to allow for natural | Pea shingle was allowed in lieu of 'soft' landscaping because the applicant was disabled and officers accepted the applicant's argument that pea shingle |

|   |                   |   |   |
|---|-------------------|---|---|
|   |                   | drainage, with a minimum requirement of 30% for properties with narrower, shorter front gardens.  | would be easier for her to maintain.  |
| 2 | 12 April 2012     | The section of the crossover policy relating to forecourt dimensions stipulates that the depth of the frontage must be an absolute minimum of 3.8 metres. | Discretion was exercised in relation to the positioning of the crossover and therefore the point from which the depth of the frontage should be measured.   |
| 3 | 6 June 2012       | The policy stipulation regarding 'soft' landscaping would normally be applied.  | An alternative design involving 'floating' steps over soft landscaping was allowed on the basis that it was an acceptable equivalent.   |
| 4 | 20 September 2012 | The policy stipulation regarding 'soft' landscaping would normally be applied.  | The limited size of the frontage and the need for a disabled applicant to access their vehicle from a wheelchair precluded the minimum requirement for 'soft' landscaping being achieved. Officers agreed a pragmatic compromise with the applicant. The applicant wrote to the Transportation Service on 30 January 2013 to thank the officers involved for considering the application on its own merits. |

Contrary to the argument advanced in section 28 of the draft report, these cases all involved exceptional circumstances that justified making exception to the crossover policy. Evidence of the decision-making process in these cases can be supplied if required.

These examples demonstrate that discretion is in fact regularly exercised in practice, even if the crossover policy gives the impression, as section 48 of the draft report states, that 'there is no provision to exercise discretion'. This holds true as a general point, regardless of whether or not one considers that the emails from September 2011<sup>1</sup> previously provided to you constitute sufficient evidence that the particular circumstances of Mr Khokhar's case were properly considered at the time of his application.

The evidence presented here shows that a higher standard of decision-making and responsiveness to exceptional circumstances prevails in practice than the crossover policy alone, and Mr Khokhar's case (where record-keeping and communication was admittedly poor), might suggest. The Council requests that the additional evidence presented here is taken into account when finalising the Ombudsman's view of the type and extent of the maladministration revealed by your investigation. The Council accepts that the wording of the crossover policy needs to be revised to properly reflect the discretion and responsiveness to exceptional circumstances that is, in general, applied in practice to all stages of applications that raise issues relating to specific provisions within the policy.

You said in your letter accompanying the draft report that there may still be a possibility of settling this complaint locally. Bearing in mind what has been said, the Council would like to propose that the complaint is settled locally on the basis of its acceptance of the three elements of remedy outlined in section 52 of the draft report, combined with a recognition of the general points made above. If the Ombudsman nevertheless wishes to proceed with issuing a report, the Council would first appreciate further explanation of the rationale for reporting rather than agreeing a local settlement.

<sup>1</sup> One minor point of correction is that the draft report refers at section 37 to these emails being dated September 2012.

If you have any further enquiries please do not hesitate to contact me on 020 8937 1041 or by email to: [phillip.mears@brent.gov.uk](mailto:phillip.mears@brent.gov.uk).

Yours sincerely



**Phillip Mears**  
**Complaints Service Manager**