

The Ombudsman's final decision

Summary: X complained about the Council's failure to take planning enforcement action against a business that operates near the business X operates. We found fault that the Council has agreed to take action to reduce the likelihood of it to happening again.

The complaint

1. The person that complained to us will be referred to as X. X runs a business and complained to the Council about another business that operates from an adjacent premises.
2. X complained that the Council failed to take planning enforcement action against the other business, which:
 - did not keep a turning area clear as was shown on an approved plan, so vehicles were reversing from the site onto the highway; and
 - operated out of hours agreed in a planning condition.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

How I considered this complaint

5. I read the complaint and discussed it with X. I read the Council's response to the complaint and considered documents from its planning files, including the plans and the case officer's report.
6. I gave the Council and X an opportunity to comment on a draft of this decision and I took account of the comments I received.

What I found

Planning law and guidance

7. Councils should approve planning applications that accord with policies in the local development plan, unless other material planning considerations indicate they should not.
8. Planning considerations include things like:
 - access to the highway;
 - protection of ecological and heritage assets; and
 - the impact on neighbouring amenity.
9. Planning considerations do not include things like:
 - views over another's land;
 - the impact of development on property value; and
 - private rights and interests in land.
10. Councils may impose planning conditions to make development acceptable in planning terms. Conditions should be necessary, enforceable and reasonable in all other regards.
11. Planning enforcement is discretionary and formal action should happen only when it would be a proportionate response to the breach. When deciding whether to enforce, councils should consider the likely impact of harm to the public and whether they might grant approval if they were to receive an application for the development or use.

What happened

12. X complained to the Council about the business that operated on the site next to their own. X said the business was operating outside hours agreed in a planning condition, and that an area shown on approved plans for turning was not kept clear.
13. X referred to the case officer report which was written before planning permission was granted. It said the hardstanding area around the site should be kept clear to allow vehicles to turn and leave in a forward gear. The plan shows other areas marked for parking and storage, but the turning area is being used for these purposes. X said that because of this, vehicles leave the site by reversing down a long access track onto the public highway. X said this was clearly dangerous and not what the case officer intended when they wrote their report.
14. The Council responded to X's complaint, and said:
 - it could not insist the business kept the turning area clear, because it did not have a condition requiring this; and
 - it would not enforce the hours of operation condition, because there were no recent complaints from nearby residents.
15. X was unhappy with the Council's response, so complained to us.
16. During my investigation, the Council expressed some uncertainty that a condition to require a turning area was enforceable. I checked the Council's website and found other approvals where conditions requiring turning areas and parking spaces to be marked out and kept clear, were imposed.

My findings

17. We are not a planning appeal body. Our role is to review the process by which planning decisions are made. We look for evidence of fault causing a significant injustice to the individual complainant.

Hours of operation

18. The Council imposed a condition, the purpose of which was to protect the amenities of residents.
19. X complained the condition was breached, but the Council decided not to enforce because X runs a business next to the site but does not live nearby. Though there are houses nearby, no residents had complained to the Council.
20. This was a judgement the Council was entitled to make, and we will not criticise unless we find evidence of fault in the decision making process. Before it made its decision the Council considered the condition, its enforcement powers and the extent to which the breach caused harm. This is the decision making process we expect and so I find no fault.

Vehicle turning area

21. In their report, the case officer said an area should be kept clear to allow vehicles to enter and leave the site in a forward gear, but the Council did not require this. There was an intention to assert planning control, but this did not happen. This is fault.
22. When we find fault, we need to decide whether an injustice was caused to the individual who complained to us. We also need to decide whether further action is needed to avoid the same fault happening again in the future.
23. From my discussion with X and reading their emails and letters, it is clear they are disappointed and frustrated by what has happened. The Council should apologise for the fault I have found.
24. A condition requiring a turning area was for maintaining safe public access to and from the site. It was not intended to benefit X as an individual business operator. Because of this, I will not recommend any personal remedy beyond an apology.
25. However, the fault I have found might happen again. I will ask the Council to review its practice and process in light of this complaint and make any changes that are necessary.

Agreed action

26. The Council agreed to carry out the following actions, which may make the fault I found less likely to happen again. The Council will:
 - a) apologise to X for the disappointment and frustration caused by the fault I have found. This will happen within four weeks from the date of this decision.
 - b) carry out a review of its practice and procedure to ensure it imposes the planning conditions it intends to. It will also ensure that the conditions it uses are enforceable, necessary and fit for purpose. This will happen within three months from the date of our final decision.
 - c) consider whether it has any power it has and should use to require safe vehicular access to and from the site. This will happen within three months from the date of our final decision.
27. The Council will report the outcomes of the actions in paragraphs 26 (a) and (b) above to its relevant oversight and scrutiny committee(s).

Final decision

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28. The Council will provide us with evidence it has complied with all the above actions.

Final decision

29. I found fault causing injustice which might recur. I completed my investigation because the Council agreed to my recommendations.

Investigator's decision on behalf of the Ombudsman