

Complaint reference:
16 006 971

Complaint against:
Cambridge City Council

The Ombudsman's final decision

Summary: The Ombudsman found fault on Mrs M's complaint about the way the Council considered a retrospective planning application for an automatic barrier. The case officer failed to explain in the report that she had not viewed submitted video and photographic evidence. Nor did she tell Mrs M this in advance to allow her the chance to provide it in a different format. The fault caused no significant injustice because the officer provided the planning committee with a separate summary of this evidence and accepted what Mrs M said it contained.

The complaint

1. Mrs M complains the Council failed to properly:
 - a) Consider a retrospective planning application for an automated barrier across a nearby private road when it granted planning permission; and
 - b) Investigate her complaint about it.
2. As a result, the installation of this barrier impacts on her quality of life.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She 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 an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

How I considered this complaint

4. I considered all the information Mrs M sent, the notes I made of the telephone conversation I had with her, and the Council's comments, a copy of which I sent her. I also sent her and the Council a copy of my draft decision. I considered their responses.

What I found

5. Mrs M and her family have lived in their home for 2 years. It is near to a newly installed automatic barrier running across the entrance to a private road. Vehicles stop at the barrier and wait until it is opened. Before, the road had a metal swing

gate which Mrs M said was permanently left open. The gate was 6 metres further away than the new barrier.

6. The old gate was replaced with a new access control barrier without proper planning consent. The landlords for the site sent the Council a retrospective application at the start of 2016. The Council approved it. Mrs M is unhappy with the way the Council dealt with the application. She complains the family is disturbed nightly from vehicles waiting at the barrier, particularly taxis for example. This is because all her bedroom windows face the road.
7. Mrs M has the following concerns about the planning and complaint processes:

Overlooking video evidence

8. As part of her submissions, Mrs M sent a dossier to the planning case officer. This included video and photographic evidence. It was partly on paper and partly on disc. The Council confirmed she offered to turn these images in to power point slides if it would help. Officers did not respond to the offer. In response to my draft decision, the case officer accepts she should have asked Mrs M to provide it in another format. Mrs M states the video provided evidence of the nuisance they were experiencing and its impact on their quality of life.
9. The Council confirmed officers did not view the video because its security system prevented it. The case officer could not access the video or photographic evidence in the format sent. The officer confirmed it would have helped to have seen the video evidence but the planning committee was aware she had not viewed it. The case officer relied on the descriptive text Mrs M provided. She had no reason to doubt what this said.
10. The Council confirmed there was no policy or guidance for case officers about reviewing this type of evidence. The complaints officer found the planning committee was aware the material was not accessed.
11. As the case officer reported that she accepted the accuracy of the submission, the complaints officer did not uphold Mrs M's complaint but recommended the Council should:
 - Review its approach and written guidance to planning officers about handling planning application representations supported by digital photographs/evidence;
 - Ensure any guidance agreed is clearly communicated to the public so they understand the acceptability of certain formats of information; and
 - Ensure members of the public are given clear information about how they might submit/resubmit digital material or have it assessed another way.
12. The Council accepted these recommendations and will act on them.

Analysis

13. There is a reasonable assumption by those making representations that planning officers will consider and take account of the material they submit at the very least to see whether they raised material planning considerations.
14. The case officer's report refers to the video and photographic evidence. It fails to explain the officer had not viewed it but relied on the descriptive text Mrs M provided. A reasonable inference drawn from the report was the officer had viewed and considered this evidence. This was not the case. The failure to clarify in the report what the officer had viewed of this evidence was fault. The officer accepts her report should have noted her inability to view the files.

-
15. It was also fault not to explain to Mrs M in advance why the officer was unable to view the evidence. This would have given Mrs M the opportunity to provide them in another format which in turn may have given her greater confidence in the planning process.
 16. I am not satisfied these failures caused Mrs M a significant injustice. This is because the amendment sheet for the committee explained why the officer had not viewed this evidence. The minutes of the meeting also records an objector speaking to the committee about the officer's failure to view photographic and video evidence. Had the committee thought it necessary, it could have adjourned to view the evidence or asked for it in a different format. In any event, the planning officer told the committee there was no reason to doubt what Mrs M said about this evidence. While the officer accepted it, what weight to give it was ultimately for the committee.

Inaccuracies in report

17. Mrs M pointed out the following inaccurate information was given to the committee:
 - The chair of the committee wrongly said the road beyond the barrier led to a dead end. The case officer confirmed pedestrians could walk through the end of the road. The complaints officer noted the chair's remark was said during the committee members' debate which is not open to the public. The chair quickly moved on leaving no chance for officers to correct him. The case officer saw no need to correct it because it was not fundamental to the decision;
 - Failing to explain that because of existing double yellow lines, waiting vehicles were forced to wait outside her house with the engine running, headlights and radio on. The complaints officer upheld this complaint but could not conclude it would have made any difference to the committee decision;
 - Failing to note a councillor's attempts to mediate. The complaints officer did not consider its omission from the report was fault: and
 - Failing to present facts about the previous gate properly, particularly about it securing the site. The complaints officer found the case officer's description fair.

Analysis

18. I found no fault on the complaint about the reference to the private road as a dead end. It was effectively a dead end to vehicles.
19. While it would have given members clearer information had the report referred to the extent of the double yellow lines, I am satisfied this information was before the committee anyway. This is because the Council's website for this application contains a photograph showing the barrier with double yellow road markings.
20. I am not satisfied the report's failure to mention the councillor's mediation attempts is fault. This is because this was not a material planning consideration.
21. Nor am I satisfied the case officer's description of the previous gate was fault. The report summarised representations received some of which said the gate was locked. The report accepted the previous gate was probably rarely closed.

Failure to consider noise impact

22. Mrs M complains the Council failed to investigate complaints about noise because of the operation of the barrier. Nor did it properly consider her independent noise survey during the application process.

-
23. The case officer's report confirms receipt of video and photographic evidence of disturbances. It went on to say it was unclear whether these reports were selective or unbiased. As noted, the officer confirmed she did not view this evidence.
 24. The senior planner confirmed Mrs M's noise report was taken seriously. Recordings were taken over a 4 day period from outside one of her bedroom windows. Information to the committee in the amendment sheet said it contained 9 separate noise events over 5 nights between 11pm and 7 am above 60 decibels. It noted this was due to waiting taxis and customers. The case officer's report noted there was no data from before the change with which to compare it.
 25. The Council noted the previous barrier could have been used more than it had which would have resulted in the same levels of disturbance and noise as the new barrier. In addition, an automatic swing barrier could have been installed under permitted development rights. These rights are given by Parliament and allow certain types of work without the need to formally apply for planning consent. While the Council notes the noise survey recognises noise disturbance when property windows are left open, bird calls contributed to the excess noise.
 26. The complaints officer did not uphold her complaint as the case officer considered the noise impact.

Analysis

27. I am satisfied the noise report was considered before planning consent was granted. The case officer made a brief summary of the report itself but gave more detail about it in the amendment sheet that went to the committee. The noise report was also available to the committee.
28. The case officer's report noted the environmental health officer's comments that the operation of the barrier itself was relatively quiet. It was quieter than the manual use of the previous gate. It also noted the comments about increased vehicular activity because the barrier had the potential to cause noise as well. The environmental health officer confirmed the Council had no power to take enforcement action for statutory nuisance from noise in the street.
29. I found no fault on this complaint. The planning officer referred to the noise report and summarised it. What weight to give to it was for the committee. In addition, I also note that the landlords could have installed a slightly smaller barrier under permitted development rights anyway which would have led to similar consequences in terms of residents' amenities.
30. The Council provided further details when I expressed concern about the way it considered enforcement powers for statutory nuisance from noise in the street under section 79 (1) of the Environmental Protection Act 1990. This lists what amounts to a statutory nuisance. This section was amended by section 2 of the Noise and Statutory Nuisance Act 1993. Section 79 (1)(ga) refers to '*noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street*'. It does not apply to 'traffic'.
31. The Council explained that in November 2015, the environmental health team received 2 complaints about noise in the street. These were mainly about people talking and vehicle movement, including reversing. The officer decided talking and noise from vehicle movement did not fall within the 1990 Act.
32. The Council states idling engines only came to its attention in March 2016 when the environmental health officer was consulted about the application. The Council

accepts noise from idling engines does fall within the 1990 Act. It needs witnessing and considered to be a statutory nuisance. Whether or not an incident amounts to a statutory nuisance depends on the location, time, frequency, impact on the community, and a matter of the officer's judgement. The officer advised Mrs M to contact its out-of-hours service.

The complaint process

33. When Mrs M complained to the Council about the failings with the way it dealt with this application, she says her complaints were overlooked or dismissed.

Analysis

34. I am satisfied the Council properly considered her complaints. This is because I have seen the independent complaints officer's correspondence with Mrs M that addresses her complaints. I found no fault on this complaint.

Agreed action

35. I considered our internal guidance on remedies.
36. The Council will, within 4 weeks of the final decision on this complaint, do the following:
- a) Send Mrs M a written apology for the fault identified; and
 - b) Confirm it has acted on and implemented the complaints officer's recommendations.

Final decision

37. The Ombudsman found fault on Mrs M's complaint against the Council. This did not cause Mrs M a significant injustice.

Investigator's decision on behalf of the Ombudsman