

Report

on an investigation into
complaint no 11 008 471 against
Shropshire Council

17 October 2012

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Mr Oak The Complainant

Ash Tree Farm An agricultural business close to the complainant's home.

Report summary

Planning

When considering an application for development of an agricultural business, the Council did not clearly specify or define what it meant by a vehicle movement. It imposed a condition restricting the site to only four movements between the hours of 2.00am and 6.00am, using the environmental health definition; this led some councillors and the public to be confused but did not affect the decision to grant planning permission.

Finding

Maladministration, no injustice. An apology had already been given and the Council has committed to greater clarity in future recommendations to councillors. But the Ombudsman concluded, on the balance of probabilities, that the decision to grant planning permission would have been the same.

Introduction

1. In summary the complaint is that the Council failed to:
 - properly apply the same interpretation of the phrase 'vehicle movement' as set out in its report to Members when drafting conditions for a planning permission for a local business;
 - adequately review the wording of the conditions against the report and decision of Members before issuing a decision notice;
 - ensure that the conditions therefore matched Committee's intentions when it reached a decision based on the officer's report containing the definition of the vehicle movement.

The complainant, Mr Oak, believes these failures have allowed the company to operate eight vehicle movements during the night rather than four.

Legal and administrative background

2. The law governing the Ombudsman's power to investigate complaints is found in:
 - a. The Local Government Act 1974
 - b. The Local Government and Public Involvement in Health Act 2007
3. Under that law, the Ombudsman's role is to consider complaints of service failure and maladministration causing injustice. The Ombudsman must consider whether the Council has acted reasonably in accordance with the law, its own policies and generally accepted standards of local administration. We look at the administrative actions of the Council but we do not challenge decisions that have been made properly even though people may disagree with the merits of those decisions. We cannot challenge the proper exercise of professional judgement by the Council's officers. Where a council has acted with maladministration or there has been a service failure, the Ombudsman considers whether injustice has arisen, and any appropriate remedy for that injustice.
4. The law requires the Ombudsman to conduct investigations in confidence and so the names used in this report are not the real names of places or people.

Planning law

5. Councils are required by law to give publicity to planning applications and to take into consideration the comments and recommendations of statutory consultees such as the highway authority and environmental health authority.

6. In a unitary authority the highway authority and environmental health authority may be sections within the same council which carry out the functions of those authorities within the legal framework and in accordance with their own criteria. Even so, their recommendations are material considerations the Council must consider. But in exercising its planning function, the Council does not have to impose any conditions those authorities recommend.
7. The Council is a unitary authority.
8. Councils may impose conditions on a planning permission to reduce the impact of a development on the amenity of the locality. Councils must be sure any condition is reasonable and enforceable.

Investigation

The key facts

9. The complainant, whom I shall refer to as Mr Oak, objected to a planning application which would increase the capacity, and therefore traffic movements, of a local agricultural business I shall refer to as Ash Tree Farm.
10. A previous application had been refused by the Council. The Council had refused that application because:
 - The application would generate unacceptable traffic levels causing disturbance to residents;
 - The application would be unduly harmful to the character of the countryside;
 - The application would have a significant effect on a European protected site.
11. The Council gave due publicity to the new application. Mr Oak lodged objections with the Council.
12. The Public Protection Unit carries out the Council's environmental health authority function. It raised concerns that any increase in the capacity of Ash Tree Farm may have an unacceptable impact on the environmental amenity of nearby residents. This would be from the increase in night-time traffic movements the application may generate.
13. The Public Protection officers measure a 'vehicle movement' as a two-way trip. In other words one vehicle movement covers a vehicle driving on to the site and driving off again.
14. The Public Protection officers recommended that if planning permission was granted it should be granted with a condition that limited the number of night time

vehicle movements to four. Under the officers' definition that is four movements onto the site and four movements off the site.

15. The planning officer must also consider the impact on residential amenity when deciding whether to recommend approval or refusal.
16. In the officer's report to committee the planning officer referred to six properties having a curtilage within 500m of the development site.
17. In his report to Members, the planning officer records that 30 objections had been received to the application, including objections from:
 - a. The parish councils;
 - b. Members of the public;
 - c. The British Horse Society;
 - d. The Bridleways Association;
 - e. The Local Action Group (local residents).
18. The report accurately summarises the objections from the parish councils, residents and others as being concerned with the impact on local roads, the visual impact of the buildings, the new access road being proposed and noise nuisance from the heavy goods vehicles that would be visiting the site.
19. The report also notes that support for the application (or no objections) were received from:
 - a. Natural England;
 - b. The Environment Agency;
 - c. Shropshire Council Ecology;
 - d. Shropshire Council Natural Environment Manager;
 - e. The Highway authority
 - f. The Highways Agency.
20. The report refers to other similar projects near to the development site, one of which had been refused permission and was now at the appeal stage. The officer noted that local objections reflected concerns that this development would have a significant impact on its own, but when combined with other nearby projects the community had a sense of being surrounded and overwhelmed by intensive farming. The officer reminded Members that they have a duty to be objective and to consider:

- a. all material planning considerations including objections,
 - b. national and local planning policies and
 - c. to determine if the proposal was sufficiently harmful to interests of acknowledged importance to justify it being refused in the public interest.
21. The planning officer recommended approval of the application, subject to conditions recommended by the Public Protection Unit to protect the residential amenity of local residents.
 22. In the report, environmental health officers are recorded as having observed that the number of vehicle movements would be 14 per day of which 4 would be between the hours of 02.00 and 06.00hrs. The officer offered no objection to another four movements by HGVs at this time.
 23. Mr Oak was allowed to address the planning committee about the application. The minutes record him saying that, if granted permission, the development would cause:

“...a very large increase in the number of vehicle movements...”
 24. In the traffic assessment submitted with the application there is a reference to “seven movements by HGVs (14 movements in and out)”.
 25. In an appendix to the officer’s report, traffic movement is defined as one movement in and one movement out of the site.
 26. After debate, the Committee granted permission for the application, subject to the following condition:

“Lorry movements...during 23:00 and 06:00 shall be restricted to a maximum of 4 movements and once on site no lorries shall leave the development site between 23:00 and 02:00hours.”
 27. Mr Oak and other residents believe Members had not understood fully what the limit of four ‘vehicle movements’ during the night actually meant. Officers were in fact recommending a limit of eight journeys. In Mr Oak’s view most planning authorities use a linear definition. This would mean a vehicle travelling to the site and passing their home would be one movement. In their view when the vehicle left the site and returned past their home, a second movement should be counted. They believe this is a common sense interpretation and what Members would have believed.
 28. The Council says there is no hard and fast definition of a ‘vehicle movement’. The condition imposed was that recommended by the Public Protection Unit and so it used the Unit’s definition.

29. In responding to Mr Oak's complaint in a letter dated 25 July 2011 the Council says:

"...this appears to be at odds with what a movement is often recognised to mean and I apologise for the confusion that has been caused. I have asked that members of the Department Management section ensure that, when undertaking consultations which involve traffic movements, it is made clear exactly what a movement involves so that such confusion can be avoided in future."

Definition of vehicle movement

30. The definition of a vehicle movement is central to this complaint.
31. Mr Oak's interpretation of a vehicle movement is reasonable. As a resident any lorry passing his home, or near to it, counts as a vehicle movement. So why did the Council adopt a circular rather than a linear definition? And why not put the definition in the recommendations in the report?
32. For clarity I have used the following definitions:
- A circular definition: One movement is a vehicle going on to and off the site;
 - A linear definition: One movement is a vehicle going on site, or leaving the site.
33. The Council imposed a condition using the circular definition of a movement. Four of those movements are permitted between 2.00am and 6.00am. But, the condition says no lorry shall leave the site between 11.00pm and 2.00am. So what of the lorry that enters before 11.00pm but has to wait to leave until 2.00am? Under the circular definition the lorry leaving after 2.00am would be half a movement.

Members' views

34. Mr Oak says only the linear definition appears in the appendix to the report so that is what Members had in mind.
35. At interview, six Members said they understood a vehicle movement to be a circular movement. All Members said there was nothing in the papers or advice given at Committee to define the movement this way. It seemed obvious because of the nature of the development proposed. The business required lorries to deliver or pick up. A lorry would go on to the site and leave it again: that was one 'movement'.

36. Three Members told my investigator they had used the same definition as Mr Oak. Indeed one said that was the usual definition used in planning.
37. Members said a clear definition of the term would have been helpful. The public would better understand what they had intended. Most Members told my investigator they valued any guidance on the use of definitions I could give.
38. The majority of members told my investigator that the condition attached to the permission reflected the definition they had understood.
39. In interview Members were asked how officers would count a single entry to or exit from the site. Under the planning condition no lorry that entered the site before 11.00pm can exit it again until after 2.00am. So how do you count that single exit at 2.00am? Members acknowledged their definition would count this as half a movement. They agreed this may cause difficulty when monitoring the number of movements.
40. All the Members told me that whatever definition they had used, the actual decision would be the same. The lorries join a main road where vehicles of all types pass day and night. Members felt that an additional four circular or eight linear movements would not increase the disturbance value of the traffic by much. The condition prevents a large increase in that traffic.
41. Members told my investigator they had voted to grant planning permission having rejected the earlier application because this application addressed their earlier concerns. In particular, the new access drive took lorries away from the local village.

Conclusions

42. Clarity in decision making should be the goal of every council and it is not always easy to achieve. The Council accepts there was a lack of clarity in its use of definitions. That lack of clarity resulted in confusion for Mr Oak and some Members. There was nothing to indicate to the public what definition was being applied. Without a definition in the report, and nothing said about this at Committee, it is fortunate for the Council that the officers' condition did reflect the Committee's intention. It may easily have been otherwise.
43. The lack of definition causes another problem. The restriction on lorries leaving between 11.00pm and 2.00am may result in enforcement officers having to count 'half a movement', which is unsatisfactory.
44. So, I find the lack of definition, either in the body of the report or in the condition, to be maladministration.

45. However, for the reasons given in paragraphs 40 and 41 above, I believe that, on the balance of probabilities, the decision to grant planning permission would have been the same even if the necessary clarity been provided.

Finding

46. For the reasons given in paragraphs 42 to 45 above I find there was maladministration by the Council. I welcome the Council's apology for any confusion and its commitment to greater clarity when reporting to committee. But, for the reasons given, I do not find that the maladministration I have found affected the decision to grant planning permission and the injustice claimed.



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17 October 2012