

The Ombudsman's final decision

Summary: We will not investigate Mr X's complaint about the Council's consideration of and decision on a change-of-use planning application for a nearby business premises next to a public highway lay-by. There is not enough evidence of fault by the Council in its planning process and its Planning Committee's decision to grant the permission to justify an investigation.

The complaint

1. Mr X lives near a business premises which applied for and received planning permission for change of use to a takeaway food outlet. He complains the Council:
 - a) allowed a planning permission which will result in the premises' owner using a nearby lay-by as a 'drive-thru' facility for their business;
 - b) failed to clarify with the planning applicant that the lay-by remains as public highway for use by all.
2. Mr X says the planning decision will have a direct impact on the value and quiet enjoyment of his home due to increased traffic to and from the site. He wants the Council to:
 - clarify with the planning applicant that the highway is not for their sole use and remains part of the public highway;
 - tell the applicant it must not be used as a 'drive-thru' facility;
 - tell the applicant all food collections must be made in person in the shop;
 - provide landscaping between his property and the lay-by area to lessen the noise, or pay him compensation to fund his own landscaping.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure', which we call 'fault'. We must also consider whether any fault has had an adverse impact on the person making the complaint, which we call 'injustice'. We provide a free service but must use public money carefully. We do not start or may decide not to continue with an investigation if we decide there is not enough evidence of fault to justify investigating. (*Local Government Act 1974, section 24A(6)*)

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4. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision-making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)

How I considered this complaint

5. I considered information from Mr X, relevant online planning documents and maps, and the Ombudsman's Assessment Code.

My assessment

6. Mr X says the Council decision to allow the planning permission will result in the premises' owner using a nearby lay-by as a 'drive-thru' facility for their business. There is no order pick-up window or other similar facility next to the lay-by in the application. People picking up orders, for themselves or others, need to go into the takeaway shop. The lay-by is for public use, which includes people parking to get orders from the new premises. They may use the lay-by, the parking at the front of the shop, or other nearby parking facilities for other local businesses to do this. The Council's planning decision does not give permission for, nor somehow create, a 'drive-thru' facility. There is not enough evidence of fault on this issue to warrant investigation.
7. Planning officers consulted the local County Council highways authority as part of the planning process. Its highways officer recommended acceptance of the application. They noted the public parking facilities and took the view the vehicle movements associated with the new use would be similar to the previous use. The District Council's planning officer took that view into account as the County Council was a statutory consultee on the highways issue.
8. The planning officer also noted the premises shares parking space with another business next door and the public lay-by would be used by delivery drivers and other commercial activities related to the business. The officer's report noted the amount of parking did not comply with its policy, but recognised the policy states that parking is but one part of the overall merits of an application. The officer determined the amount of parking at the property did not, when balanced against the wider aspects of the proposal, give grounds for a refusal. That was a professional judgement the officer was entitled to express in their report.
9. The Members of the Planning Committee then considered the application, including the officer's report and the associated information, and voted to grant the permission. If any Members had concerns about any aspect of the development, including parking or traffic issues, it was within their powers to refuse the permission or seek further information before reaching a view.
10. There is not enough evidence of fault by the Council on its consideration of and decision on the planning application to warrant us investigating. Officers consulted appropriately, responded to relevant objections, including highways issues, and set out the Council's decision in the planning report. The Planning Committee Members then decided to grant permission. I recognise Mr X may disagree with the Committee's decision. But it is not fault for a council's elected Members to properly make a decision with which someone disagrees.
11. Mr X says the Council must clarify with the planning applicant that the lay-by will remain as public highway for use by all. There is no indication in the online planning documents that the takeaway's owner has sought to claim sole control or ownership of the lay-by, or that the Council's planning decision provides them

with such control or ownership. As the Council stated during the planning process, the lay-by remains a public highway facility available for use by all, including drivers accessing the takeaway. There is not enough evidence of fault by the Council in not re-confirming with the applicant the public highway status of the lay-by to warrant an investigation.

Final decision

12. We will not investigate Mr X's complaint because there is not enough evidence of fault by the Council in its planning process or its Planning Committee's decision to grant the permission to justify an investigation.

Investigator's decision on behalf of the Ombudsman