

**Complaint reference:**  
17 000 968

**Complaint against:**  
North Tyneside Metropolitan Borough Council

## **The Ombudsman's final decision**

Summary: The Ombudsman has upheld this complaint about planning enforcement as there was fault by the Council. The Council has provided a satisfactory remedy for the injustice caused including an apology, training and ensuring planning conditions are met.

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## **The complaint**

1. The complainant, whom I shall refer to as Mr C, complains the Council failed to properly investigate and take appropriate and timely action in response to his reports of planning breaches at a nearby development site. Mr C also complains the Council has wrongly refused his request for a pedestrian controlled crossing.
2. Mr C says because of the Council's fault he suffered from mud, dust and noise outside the permitted working hours from the development for longer than necessary. Mr C also says the existing arrangement for the crossing point near his property is not safe to use as a pedestrian.

## **The Ombudsman's role and powers**

3. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
4. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

## **How I considered this complaint**

5. I read the papers provided by Mr C and discussed the complaint with him. I have provided a copy of the Council's information to Mr C after removing confidential third party information. I have explained my draft decision to Mr C and the Council and provided an opportunity for comment. I have considered the comments received.

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## What I found

### Background

6. Planning authorities may take enforcement action where there has been a breach of planning control and it is 'expedient' to do so. It is for the planning authority to decide whether it is expedient to take action.
7. Section 171A of the Town and Country Planning Act 1990, as amended, defines a breach of planning control as:
  - the carrying out of development without the required planning permission; or
  - failing to comply with any condition or limitation subject to which planning permission has been granted.
8. Where the breach involves carrying out development without permission, the authority may serve an Enforcement Notice if it is expedient to do so under section 172 of the Act. It is for the authority to decide whether it is expedient to take action. An Enforcement Notice creates a right of appeal to the Planning Inspectorate.
9. Where there is a breach of a planning condition, the authority may serve a Breach of Condition Notice under section 187A. Failure to comply with a Breach of Condition Notice is an offence that may be tried in the magistrates' court.
10. The National Planning Policy Framework says enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.
11. Where planning permission is granted subject to conditions, it is possible to apply for a permission to vary or remove those conditions.

### Key events

12. The Council granted planning permission subject to conditions for a large housing development with associated access, infrastructure and engineering works in November 2015. The permission was subject to several conditions including a restriction on construction, deliveries and vehicle movements outside the hours of 8am and 6pm Monday to Friday and 8am to 2pm on Saturdays. This condition was to safeguard the amenity of nearby residents. There was also a condition requiring a scheme to be provided and approved by the Council before development started to prevent the deposit of mud and other debris on the highway and to suppress dust from construction activities. The scheme was to include details of mechanical street cleaning brushes and the provision of water bowsers. There was also a condition to keep and protect all hedges and hedgerows unless identified on the approved plans for removal.

### Crossing provision

13. Mr C refers to the Council's Highways Team 'ignoring' the Planning Committee's acceptance that a particular crossing point needed a pedestrian-controlled crossing and instead allowed a pedestrian refuge. The Council has provided a copy of the agreed Committee meeting minutes. These include an account of Mr C's detailed submission to the Committee and the Committee's resolution which does not record such a request.
14. Mr C sought information about the proposed crossing in November 2015 and chased the Council in December and January 2016. The Council provided a reply in January and apologised for the delay in responding.

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15. The Council explained any new pedestrian crossing would need pedestrian surveys. The Council has confirmed there are several crossing points along the road in question including: pedestrian islands which allow pedestrians to cross in two stages; a signal controlled crossing; and uncontrolled dropped kerb arrangements where the existing public right of way network crosses the road.
  16. The Council says the particular stretch of road is one kilometre and after the highway widening scheme is completed will provide eight crossing locations. These will be three signal controlled crossings (one at either end and one in the middle), four pedestrian islands at roundabouts (two new and two existing), and a single pedestrian refuge at the location Mr C has raised concerns about. The Council considers the current crossing provision is safe but accepts it can take some time to find an appropriate gap between the traffic to cross. The Council highlights that once the highway widening scheme is completed all uncontrolled crossing locations will provide two stage crossings which make it easier to find a safe gap to cross and the position of the new housing development access 150 metres from the crossing location will introduce more gaps in the traffic as it negotiates the new junction with reduced approach speeds.
  17. The Council also explains pedestrian refuges are in common use as set out in the Design Manual for Roads and Bridges (DMRB). The Council has assessed the visibility splays from the crossing point against the DMRB and completed a road safety audit and found the pedestrian and driver visibility is appropriate. The Council has also considered the national standards provided by the Department for Transport Local Transport Note 1/95 'The assessment of pedestrian crossings' in concluding the current proposal is safe and in accordance with national guidance.
  18. The Council has provided detailed reasons for its decision about the type of crossing at this location. I have seen no evidence of fault which would allow me to question the Council's decision.

#### **Reports of planning breaches**

19. Mr C raised several issues in February 2016 including concerns about hedgerow removal and mud on the road. Mr C also sought the timescale for the required highway improvement works. The Council advised Mr C that it was considering an application to discharge certain conditions and provided a link to the application. The Council advised the timescale was outstanding.
20. The Council visited the site in February and confirmed the sections of hedging the developer was removing were in accordance with the approved plans and screening was being erected to protect the sections remaining. The Council confirmed this to be Mr C. The Council visited the site in March and found the highway to be in a poor state and advised the developer of the need to take immediate steps about the mud and debris.
21. Mr C reported in March that work was starting on site at 7.30am instead of the permitted 8am and provided photographs of mud on the road. The Council reminded the developer about the permitted hours of construction and sought a timescale for providing a suitable wheel wash.
22. Mr C reported in April the developer was still breaching the permitted hours of work. The Council visited the site and wrote to the developer about this requirement. The developer agreed to a traffic survey to monitor the arrival time of deliveries to site and advised it may seek an amendment to the relevant condition to amend the start time from 8am to 7.30am.

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23. The Council visited the site in April and confirmed a water bowser was in place. The developer was using a road sweeper during the day and was to provide a wheel wash once a new road was completed on site. The developer confirmed details of the completion of site roads and associated improvements to on site construction parking and issues with dust and mud. The developer confirmed it was using jet wash facilities and was to install a permanent wheel wash facility toward the end of May. The developer agreed to a traffic survey to monitor the arrival time of deliveries to site and advised it may seek an amendment to the relevant condition to amend the start time from 8am to 7.30am.
  24. The Council visited the site several times during May and found the condition of the road was acceptable and would not require enforcement action. The Council also noted that although workers were present on site before 8am there was no excessive noise which could be heard above the traffic noise. The developer provided evidence that all contractors had been advised about the start time of 8am and warned of the consequences of non-compliance.
  25. The Council made several visits to the site during June and July and found some instances of working outside permitted hours. Mr C also provided photographic evidence of deliveries on a Sunday in July. The Council advised Mr C in July that it was drafting a breach of condition notice (BCN) which it would then refer to its legal team. The Council explained there may be a delay in serving the notice due to resource pressures.
  26. A site visit in August found no breach of permitted working times and a September visit found the road condition acceptable. Mr C made further reports about out of hours working and blocking of a right of way. The Council visited the site in September and found the works were by another developer who was advised about not blocking the right of way. The Council subsequently confirmed the works were related to the site and that it was considering the submission of condition details about the works and diversion requests. The Council provided details of the applications to Mr C in October.
  27. The Council visited the site in October and November and found no breach of the permitted working times. The Council confirmed to Mr C in November the BCN was awaiting a final signature before serving.
  28. The Council served a BCN in December about the hours of construction work. The Council visited the site several times in January 2017 and found no breaches of the permitted working times. The Council further visited the site in February, March and April and did not identify any breaches or that the road condition required enforcement action.
  29. The Council during its complaint correspondence with Mr C acknowledged times when there were delays or inaccurate information in its responses to him and apologised. It also confirmed the following in April:
    - it would provide customer service training and monitor customer service performance;
    - it would take appropriate action about performance issues; and
    - there were wheel wash facilities, water bowzers and road sweepers on site as required as well as a fully operational eco bath.
  30. Councils have no duty to monitor development. They are dependent on members of the public, harmed by unauthorised development, complaining to them about it. They then have a duty to investigate. The Council has provided evidence it

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responded to Mr C's reports of planning breaches, visited the site and corresponded with the developer. The Council was also in regular communication with Mr C.

31. Councils have power to enforce but they have no duty to do so. Also, if a council decides that enforcement action is appropriate, it must follow government guidance which says that any action should be proportionate and commensurate with the breach of control to which it relates. The Council was not acting with fault in its approach of working with the developer to achieve compliance. There was some delay in serving the BCN and some poor communication with Mr C. However, I consider the Council's apology and actions above are enough to remedy Mr C's injustice and the Ombudsman would not seek more.

### **Final decision**

32. I have completed my investigation and uphold the complaint as there was fault by the Council causing injustice to Mr C. I am satisfied the action the Council has already taken is enough to provide a satisfactory remedy.

### **Investigator's decision on behalf of the Ombudsman**