

**Complaint reference:**  
16 018 056

**Complaint against:**  
Newark & Sherwood District Council

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

Summary: There was avoidable delay in pursuing enforcement action about breaches of planning control at a site near to Ms X's home. The Council also failed to meet the recommendations it agreed with the Ombudsman on Ms X's earlier complaint about the same issue.

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## **The complaint**

1. Ms X complains the Council has failed to take the action it agreed following a previous complaint she made about the use of a field near her parent's home.
2. In November 2015 the Council told us it was considering taking further action. It agreed to proceed with any action it intends to take in a timely fashion. It also agreed to make at least bi-monthly updates to the Parish Council to ensure residents were kept informed of the action the council is taking and the reasons for its decisions. The Council agreed to send the complainant a letter of apology for the delays identified in progressing action at various points. Ms X says the Council has failed to do what it agreed.
3. Ms X complains the Council has failed to take any action in respect of the site and the problems she complained of previously remain unresolved.

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

4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. If we are satisfied with a council'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**

6. I spoke to Ms X and considered the complaint she made. I considered the information she provided.
7. I made enquiries of the Council and considered its response. I visited the Council offices to look at its files and I interviewed officers.
8. I sent my draft decision to the complainant and to the Council to enable both parties to comment before I made a final decision.

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## What I found

### Background

9. Ms X complains that the Council has failed to take appropriate planning enforcement action against a third party (Mr Y) about the use of a site near to her parent's home. She also complains the Council has not carried out the action it agreed following her previous complaint to the Ombudsman about the issue.
10. In November 2015 the Ombudsman found the action the Council had taken in respect of the site between 2011 and 2015 had been appropriate. The Council had issued Enforcement Notices and it prosecuted Mr Y for his failure to comply. In July 2015 the Council resolved to obtain an Injunction against Mr Y requiring him to cease the unauthorised use of the field for residential and commercial purposes and to remove structures and items that related to both residential and commercial use.
11. However, there had been delay and the Council was, at times, slow to take action. The Council agreed to apologise to Ms X for the delay. It also agreed to update the Parish Council about the action being taken at the site every two months, so that residents were kept up to date.

### Action taken since 2015

12. The Council engaged external solicitors in August 2015 to arrange an injunction hearing. The court held directions hearings in April 2016 and July 2016. In September 2016, the courts scheduled a hearing for December 2016.
13. Ms X became aware that in July 2016 the Council had discussed with Mr Y's solicitor a proposal that he vacated the site and carried out the required action voluntarily. Ms X felt this was inappropriate given the time the matter had been ongoing and Mr Y's lack of compliance previously. I have seen the background documents that relate to the discussion about the voluntary undertaking. There are clear reasons why the Council took this step and it is clear the Council had intended the undertaking to be made to the court, as part of the injunction proceedings which would make it binding.
14. In September 2016 it became clear that Mr Y would not agree voluntarily to all of the action required.
15. A substantive court hearing took place in December 2016. The court granted an injunction in January 2017 requiring Mr Y to cease the unauthorised use of the site and remove structures and relevant goods by 1 April 2017.
16. In March 2017 the Council visited the site and established that Mr Y had not vacated the site or complied with the other elements of the injunction. There is evidence the Council was preparing to take direct action to clear the site if this was not done by April 2017.
17. In April 2017 the Council brought the case back 'in-house' from the external solicitors. Officers noted they had delegated authority to proceed with direct action to achieve the action required by the injunction. They also agreed to update member of the planning committee.
18. A further complication came to light in 2017. The Council had become aware that the land in question was now owned by the Crown. In May 2017 the Council took counsel advice about its enforcement objectives, Mr Y's situation and issues about ownership of the land.

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19. Counsel confirmed that the Crown must consent before the Council entered land it owned and permission must be sought for the Council to take further enforcement action on the land.
  20. In July 2017 Mr Y moved out of the caravan on site to live elsewhere. Ms X told me the caravan was removed in August 2017. Although this resolved part of the breach of planning control, Mr and Mrs Y had not complied with the remaining elements of the injunction.
  21. The Council wrote to the Crown on 16 August explaining the situation. It asked the Crown for permission, as a matter of courtesy to enter the land for the purposes of enforcement.
  22. The Council noted it received reports that other people had been on site, since Mr and Mrs Y left, but this was on an ad-hoc basis. The Council chased the Crown for a response on 26 September 2017. As of September, it stated it awaited consent from the Crown before it could take any further action.
  23. On 3 October, the Crown told the Council that it did not propose to take any action that might be construed an act of management of the land. In practical terms, the Crown stated it could not give consent, but neither was it likely to interfere with action taken by an appropriate body with the appropriate power to act.
  24. In October 2017 Ms X told me the commercial use of the site had continued as usual despite Mr and Mrs Y having left the caravan site and the residential use of the site having ended. The Council confirmed that it had no evidence to suggest the commercial use had ceased as of October 2017.
  25. The Council told me although it did not proceed with direct action, it began committal proceedings against Mr Y for breach of the injunction. This was on the basis that, although residential use of the site had ceased, the site still contained significant materials, lorry bodies and general commercial paraphernalia.
  26. On 6 December 2017, a committal hearing took place. At the hearing Mr Y showed the court photographs of the site showing it had been largely cleared. The court issued a revised court order which stated the committal application would be dismissed unless the Council applied for it to be re-listed by 5 January. The court stated a new hearing would only be needed if the Council considered the breach of planning was resolved to the satisfaction of the Council.
  27. The Council considered the evidence Mr Y presented to the court and from a site visit that officers conducted immediately after the court hearing. The case officer wrote a report to consider what further action the Council should take.
  28. The report made clear that the injunction had not been complied with. However, because the residential use had ceased and the site had been cleared of commercial items to a significant extent, the officer noted it was necessary to consider what items remained on site, the harm they posed and whether it was expedient to continue with enforcement action or committal proceedings.
  29. The report noted that fencing, stables a metal container unit and a shed remained on site. In addition, a large metal framed building remained, along with a loaded lorry trailer and a unit. The officer noted that the Council had previously considered the planning breaches were visually harmful. He also noted the Council had previously refused permission for a similar metal storage building on the site.

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30. The case officer considered the stables, fencing container and shed were not visually harmful in planning terms and would be unlikely to justify enforcement action in themselves, particularly in a rural context.
31. He considered that following the clearance of the commercial paraphernalia, the metal framed building now had the backdrop of the fencing shed and stables. As a result, it was not considered as visually harmful as previously envisaged (provided it was being used for agricultural purposes). He acknowledged that local residents may consider nothing other than the full site clearance was acceptable, but the situation was now finely balanced. He recommended that it was no longer expedient to pursue the matter. The Council considered there was little or no evidence that commercial use of the site was continuing as of December 2017.

### **Apology/Communication to remedy from Ms X's 2015 complaint**

32. In response to my enquiries on Ms X's current complaint the Council told me it had not sent a letter of apology. However, it had offered verbal apologies when speaking to Ms X subsequently. The Council stated it had updated local council members, local residents and the parish council 'as necessary and appropriate'.
33. The Council's records show some apparent confusion over who should have sent the letter of apology to Ms X's family. This appears to have resulted in no apology letter being sent.
34. There is evidence the Council provided some updates to the Parish Council occasionally and updated Ms X when she made contact. I recognise that it is not possible for the Council to release information about third parties, and the need to maintain confidentiality limited what the Council could tell residents. However, regular bi-monthly updates to the Parish Council were agreed to ensure residents knew the action being taken on a regular basis, given this is a longstanding enforcement situation. This would also enable residents to challenge the Council if there was, apparently, a lack of progress. The Council does not appear to have placed emphasis on ensuring the agreed actions from the previous complaint were met in full.

### **Relevant Law**

35. Section 178 of the Town and Country Planning Act allows a council to take direct action. It allows councils to enter land and to take any steps required by an enforcement notice. The law allows these steps to be taken without an injunction.
36. Section 187B of the Town and Country Planning Act allows a council to apply to the courts for an injunction to restrain a breach of planning control. This is a significant action to take.
37. Paragraph 207 of the National Planning Policy Framework (NPPF) states that effective enforcement action is important to maintain public confidence in the planning system. However, enforcement action is discretionary and councils should act proportionately when responding to reports of breaches of planning control.

### **Analysis**

38. We found there was delay by the Council when we investigated Ms X's previous complaint. Given the planning enforcement issues had been longstanding, we recommended the Council took the action it intended in a timely fashion. We also recommended the Council maintained regular contact with the Parish Council and sent a letter of apology to Ms X's parents.

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39. There has been further delay in taking action since 2015.
40. The Council's planning committee authorised officers to get an injunction and to take direct action in July 2015. The Council is not obliged to take injunction proceedings before it takes direct action. However, the Council took legal advice and determined it was appropriate to do so in this case. This was a decision it reached properly following legal advice.
41. However, there was a long delay between July 2015 and April 2016 when the first of the hearings took place.
42. I am unable to set out the background to show why the Council proposed Mr and Mrs Y made an undertaking to the courts in or around July 2016. This is because it involves information the Council received about third parties that must be kept confidential. However, I am satisfied the decision to propose an undertaking, given the circumstances at the time, was a decision the Council considered properly. Although I understand Ms X considers the Council should not have taken the approach it did, I am satisfied it was not made to show leniency. Rather, given the presenting circumstances, the intention was to ensure that the issues at the site were resolved and compliance was achieved.
43. However, even though accepting a voluntary agreement was a step the Council was entitled to consider, the overall time it took to achieve the injunction hearing was excessive. The Council used an external solicitor for this work, but it retained responsibility for the matter. The time taken to progress the matter is especially disappointing given the delays identified in the previous investigation and the Council's agreement to make progress in a timely fashion as a result. The delay constitutes fault by the Council.
44. The injunction obtained in January 2017 required Mr Y to cease the unauthorised use of the site and clear the site by 1 April 2017. There were several complications to taking further action after 1 April 2017. The first was that the Crown had become the owner of the land. The Council took legal advice and established that it needed the permission of the Crown to take the direct action. The Council sought permission in August 2017. This further delayed direct action but the Crown's response in October 2017 indicated the Council is not prevented from taking direct action if it considers it appropriate.
45. The Council did not proceed with direct action. But it took committal proceedings against Mr Y. This went before the court in December 2017. At the hearing, Mr X demonstrated to the court that he had taken some action to clear the site. The Council had to consider whether this changed its view. It re-visited the site and considered its position. It took the view that it was no longer expedient to act. Although this was a shift from its previous view, the report about the matter clearly considered the situation as it stood, the planning history, the Council's previous stance and residents' views. It decided it should not pursue the matter further. The law does not oblige councils to take formal action.
46. I recognise that Ms X would want to see direct action to completely clear the site. While the Crown's response indicated this was still an option, the Council considered the actions taken by Mr Y were sufficient to change its view. The Council clearly considered formal action was necessary in the past, but it was entitled to reconsider because of work Mr Y had done. The decision not to take further action was a professional judgement the Council was entitled to take. I have no grounds to question it.

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47. Ms X explained to me that in her view, the commercial use of the site was continuing regardless of the removal of Mr Y's residential caravan. She explained that she had suffered low level anti-social behaviour from those on the site for a long period which she continued because the Council had not taken action. Although there are few formal reports of the anti-social behaviour themselves, I acknowledge that the ongoing situation has been stressful and delays in taking action have been frustrating for Mrs X and her parents.
48. The Council's report focussed on the acceptability of the buildings and items on site. It noted the Council would consider the situation afresh if the situation changed. Given the history of the site and Ms X's reports of continuing commercial use for car breaking, I would expect the Council to properly consider any other information Ms X or other local residents have that the site is still being used for commercial purposes. It should investigate and write to Ms X to confirm the outcome of its investigation within eight weeks of receiving any further information Ms X wishes to provide.
49. It is disappointing that the Council failed to write and apologise to Ms X following Ms X's previous complaint. It also failed to consistently provide the updates it agreed to. This too is clearly fault as the Council had agreed to take this action.

### **Agreed Action**

50. To recognise the further delays that occurred over a long period, the failure to follow our earlier recommendations and the frustration and distress that the matter caused to Ms X and her family, the Council agreed to pay Ms X £700. This includes £200 for the time and trouble she was put to in pursuing her complaint. This payment should be made within four weeks of our final decision.
51. The Council agreed it would investigate any information Ms X wished to provide to the Council about the continuing use of the site for commercial purposes. Ms X should provide the Council with any further evidence or information she has within two weeks of my final decision. The Council should investigate and write to Ms X to update her of progress within eight weeks of my final decision. It should continue to update Ms X regularly should the investigation take longer than this to conclude.

### **Final decision**

52. There was fault by the Council that warrants a remedy.

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