

Section C: Highways

C1: Footpaths

Failure to inform residents affected by the line of a footpath – delay in taking action to resolve the problem

1. Mr Cory complained that there was unreasonable delay by a council in seeking an Extinguishment Order in respect of a footpath over which the predecessor authority had built houses. He said that the delay caused him distress and inconvenience, and that he sustained a financial loss as a result of the difficulties he experienced in selling his house.

History

2. In the early 1970s the predecessor council built a housing estate of 82 properties. Mr Cory bought one of the houses on the estate in 1987. The council transferred its remaining housing stock to a housing association in 1990. When he bought his house, Mr Cory was not aware that the line of a public footpath ran through his property and through numerous others on the estate. The council said that the existence of the path was clearly not realised by the predecessor authority at the time of the planning application for the estate.
3. The footpaths officer noticed the problem of the path during her investigation of paths in the area. In September 1992 the council resolved to advertise a proposed diversion of the path so as to detour around the houses.

Consultations

4. In November 1992 the council sent consultation letters to statutory undertakers and to interested parties including a local rambling club, the Open Spaces Society and the Ramblers' Association. It did not, however, inform the people – such as Mr Cory – who actually lived on the estate and who

had a direct interest in the effect of the footpath and in measures to deal with the problem. The council said that telling the residents could have caused problems for them which at the time might not have been resolvable. The footpaths officer said that people might have been distressed needlessly, or concerned about publicity or about people wanting to exercise their right to use the right of way through their properties. A legal officer said that he did not recall any conscious decision having been made not to tell residents, but it had probably been felt best not to ruffle feathers. The Ombudsman did not consider that the council had provided a sufficient explanation of why it did not inform the residents and concluded that this omission was maladministration.

5. In response to the consultation letter, the council received objections from the Ramblers' Association and the local rambling club. The council then tried to persuade them to withdraw their objections to the diversion of the footpath. It was two years – including a period of well over a year when nothing at all happened – before the council concluded that it was getting nowhere and had to resolve the situation by making an Extinguishment Order (subject to confirmation), which it then did. In March 1995 the council sent consultation letters to statutory consultees and interested groups such as the local rambling club.

6. At that point, the council had a statutory duty to serve notice on owners, occupiers and lessees, among others. It did not do so. That was a breach of statutory duty, which the Ombudsman found was maladministration.

7. There was then a period of a further 18 months with an exchange of views between the council and the objectors before the Extinguishment Order was confirmed.

Problem discovered

8. In the meantime, in April 1996, Mr Cory put his house up for sale. He became aware of the problem of the footpath running through the property as a result of the local land search carried out by a prospective purchaser.
9. Mr Cory had not envisaged any problem in selling his house quickly because he had a first time buyer, and everyone in the 'chain' had been ready to complete. In the event, however, the purchaser of his house had been unable to proceed quickly because of the footpath problem. In the end it was more than six months before he was able to complete a sale.
10. When Mr Cory contacted the rambling club to explain his difficulty, it withdrew its objection, as did the Open Spaces Society.

Conclusion

11. The Ombudsman considered that if Mr Cory and other residents had been informed, either in the first place or when the Extinguishment Order was made, it was likely that they would have told the council that they wanted urgent action to resolve the problem. The local rambling club, the Ramblers' Association and the Open Spaces Society might nonetheless have

maintained objections to an Order, and the matter would then have had to be referred to the Secretary of State for decision. But it seemed to the Ombudsman more likely that these bodies would not have sustained their objections in the light of the strong representations which Mr Cory and other residents would have made had they known about the footpath. He concluded on the balance of probabilities, therefore, that if there had been no avoidable delays on the council's part and residents had been told about the footpath, the Order would have been made before the need arose for Mr Cory to sell his house.

Remedy

12. But for the maladministration, Mr Cory would not have needed to incur £1,000 of legal costs associated with the footpath; it was likely that he would have been able to sell his house sooner and so he would probably have avoided the need to maintain two homes for a period; and he would have been spared much anxiety. In recognition of the injustice to Mr Cory, the Ombudsman recommended that the council should pay him £2,500.

(Report 96/A/3168)

C2: Vehicular access

The need to give accurate advice – the need for a decision to be supported by clear reasons

1. Ms Grant complained that a council failed, over a considerable period of time, to deal properly with her request for vehicular access to her home. She said that as a result she had been caused inconvenience and financial loss.

What happened

2. Ms Grant applied to the council's housing department for permission to create a vehicular access to her council owned home. Although she requested an access at the front of the property she drew attention to the possibility of access from a cul-de-sac at the rear, as that might be considered safer.
3. Following consultation with the highways department, it was agreed that Ms Grant could create an access to the rear of the property. This was subject to her obtaining the council's agreement to a licence to cross a grass verge which lay between the highway and her property.
4. The council wrote to Ms Grant setting out the conditions she had to meet to construct a hardstanding partly in her garden and partly on the grass verge. She was advised to ascertain the classification of the highway as that would determine whether planning permission was required from the council.
5. Ms Grant's father said he telephoned the council and was advised that planning permission was not required. The council said there was no record of this call. The council said that any advice given over the telephone was inevitably subject to risks of misinterpretation. Therefore it was standard practice to ask for confirmation of an enquiry in writing and for the written enquiry then to be given full consideration. Mr Grant said that he was not given this advice and didn't make a written enquiry.
6. The council approved the application for an annual licence, noting that Ms Grant was unable to gain access to the front of her dwelling owing to the position of a bus shelter and lamp post.
7. The council was later contacted by one of Ms Grant's neighbours asking if Ms Grant had planning permission to create an access to the rear of her property as work was then being carried out.
8. An enforcement assistant visited Ms Grant. She confirmed that planning permission was not required for gate posts which were being installed, because of their height. However, since an access was being formed, she questioned Ms Grant to see whether planning permission was required. Ms Grant showed her correspondence from the council. An area of hardstanding was required as a condition of the licence but it was not clear to the officer from the correspondence whether that was inside or outside the garden. She advised Ms Grant to contact the planning department to find out whether planning permission was required for a hardstanding in this area.
9. Ms Grant's father then telephoned a planning officer. Mr Grant said he was again advised that no planning permission was required. However, at a subsequent parish council meeting Mr Grant was told that the parish council had been informed in a letter

from the council that planning permission was required. Mr Grant contacted a senior planning officer, who said that the hardstanding across the verge needed planning permission.

10. The council received a petition from residents in the cul-de-sac objecting to the grant of a licence and to planning permission for access to the rear of Ms Grant's home. The council decided that the licence agreement should be terminated. The council wrote to Ms Grant giving her six months' notice and requiring her to close the entrance on to the cul-de-sac. Ms Grant said that the council gave her no explanation for this decision.
11. The council decided to reimburse the licence fee and arrangement fee which Ms Grant had paid and to waive the licence fee for the period of notice as a gesture of goodwill.
12. Ms Grant then secured planning permission for a vehicular access and hardstanding to the front of her home. The front access was completed in accordance with the planning consent. Ms Grant said the bus shelter restricted visibility. She had not reinstated the rear boundary fence. However, a garden shed had been erected on the inside of the double gates effectively preventing access by that route. Ms Grant said that she had been put to considerable expense as she had had abortive costs totalling £1,150 for the construction of the rear entrance and had also had to pay to install the front access.

The Ombudsman's view

13. The Ombudsman commented:

"Ms Grant proceeded to carry out the necessary work to create an access to the rear of her home after having made

sensible inquiries. She was given no cause to doubt that the access could be brought into use with all relevant consents.

That happy situation came to an end following complaints from other residents when, in my view, the council arbitrarily and without clear reasons decided otherwise. That decision flew in the face of all that had gone on before. There was no effort to address Ms Grant's abortive costs and I regard the council's actions here as maladministration."

14. The Ombudsman found maladministration in other respects as well. She said the whole saga was infected with delay and a lack of clarity – and noted that at one point the council told Ms Grant's father that planning permission was not needed and, around the same time, told the parish council that it was.

Injustice

15. The injustice caused by the council's maladministration was not simply Ms Grant's abortive costs concerning the rear access. She also suffered considerable anxiety, frustration and stress – not least because of problems with her neighbours which the council's failures made worse. Her difficulties were ameliorated by the council's agreement to allow an access to the front, although this was less safe than a rear access would have been.
16. To remedy the injustice the council was recommended to pay Ms Grant £1,500 plus any reasonable costs incurred in reinstating the rear fence; and to review its procedures.

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