

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

Summary: Mr X complains the Council has failed to ensure a developer complied with the conditions on planning permission for development where Mr X lives. The Ombudsman will not investigate this complaint. This is because it is late. And we are unlikely to find fault in the Council's actions.

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## **The complaint**

1. Mr X complains the Council had failed to ensure the builder of the development where he lives complied with the planning permission. He says he finds it difficult coping with defective footpaths. And the Council should apologise for the distress he has suffered.

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

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service but must use public money carefully. We may decide not to start or continue with an investigation if we believe it is unlikely we would find fault.

(*Local Government Act 1974, section 24A (6), as amended*)

## **How I considered this complaint**

5. I considered the information provided by Mr X. I also considered the Council's responses to his complaint and the planning permission which is available on the Council's website.
6. Mr X commented on the draft version of this decision.

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## What I found

7. Mr X says that 7 months after moving into his new home, he injured his foot on a raised water valve access lid. And that he complained to the Council who told him which was down to the developer.
8. Mr X complained to the Council again in 2018. The Council says officers visited the site and asked the developer to address several areas where raised ironworks presented significant trip hazards. And that works on the final surface should be finished by the end of this summer.

## Assessment

9. The Local Government Act 1974 says that we may not investigate any complaint where the complainant was aware of the matter more than 12 months previously: but we may exercise the Ombudsman's discretion to investigate if there are good reasons to do so.
10. Mr X was aware of the condition of the road surface in 2016, when he first approached the Council. So, the complaint is late. I must therefore consider whether to exercise discretion in this case.
11. Local planning authorities have a duty to investigate if they are informed there has been a breach of planning control. In this case, once the Council was informed of the breach it considered what, if anything should be done.
12. The condition on the planning permission says:  
*"No dwelling shall be occupied until the garage(s) and/or parking spaces proposed to serve that dwelling, and vehicular, cycle and pedestrian access to it have been provided in accordance with the details set out in the plans hereby approved or that shall otherwise have been submitted to and approved in writing by the Local Planning Authority. The vehicular, cycle and pedestrian access to the dwelling and its parking provision shall be laid out and completed at least to road base course, with all ironworks to be laid flush with that level"*
13. The planning permission only requires the developer to complete the road and footpaths etc to road base course. And for all ironworks to be laid flush with the road level.
14. Council officers visited the development where Mr X lives. It says it inspected the site and where it identified raised ironwork it required the developer to mitigate the trip hazards. It is *"satisfied that in most areas the condition has been complied with in full and where it has not been the harm arising from this has been appropriately mitigated such that further action is not warranted."* It also says the developer intends to finish to surface by the end of this summer.
15. The Council has investigated Mr X's complaint. Its statutory duty is to consider the situation. It has powers to take action, but it has no duty to do so. Its' duty is to consider whether further action would be appropriate. The statutory test it must apply is set out in The Town and Country Planning Act 1990, section 172. This says the local planning authority may issue an enforcement notice where it appears there has been a breach of planning control; and "it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations."

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16. The National Planning Policy Framework offers further guidance. It says:  
“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.”
  17. The use of enforcement action is always at the local planning authority’s discretion. The Ombudsman could not criticise an authority in the exercise of its discretion unless there was administrative fault in the way it reached its decision on the use of its discretion.
  18. The Council has advised the work to the final road course is due to be complete by the end of this summer.
  19. I understand that Mr X may disagree with the Council’s decision not to take action against the developer, but without fault, the Ombudsman has no powers to criticise.

### **Final decision**

20. I will not investigate this complaint. This is because it is late. And from the information we have seen we are unlikely to find fault in the Council’s actions.

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