

**Complaint reference:**  
16 012 907

**Complaint against:**  
East Devon District Council

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

Summary: There was no fault in the Council's consideration of the highway matters when considering the planning application.

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### **The complaint**

1. Mr B complains on behalf of an action group. They complain about the consideration given by the Council to highway matters when approving a planning application for a commercial use. The residents are concerned about the safety of the access.

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

2. 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*)

### **How I considered this complaint**

3. I considered the complaint and spoke to Mr B. I asked the Council for its comments on the complaint and additional information. I sent a copy of a draft of this statement to Mr B and the Council and invited their comments.

### **What I found**

#### **4. Background**

5. A planning application for the erection of buildings for a commercial use at a disused farm was submitted to the Council. The District Council consulted the County Council as the Highways Authority.
6. The report from the County Council as highway authority recommended the Council attach two conditions to the planning permission if the District Council approved the application. The Council approved the application and imposed the two suggested conditions.

#### **The visibility splays**

7. The key part of the complaint is about the visibility splays at the junction. The action group considers the access will be unsafe and the Council's consideration of the visibility splays was inadequate.
8. The District Council when granting planning permission had the comments of the County Council as highway authority on the proposals. We have already

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- considered a complaint from the action group about the comments made by the highway authority. Part of the complaint was upheld but not in respect of the highway authority comments on and consideration of the visibility splays.
9. It was not fault for the District Council to rely on the comments provided by the highway authority as the appropriate authority. It did not have to carry out its own assessment.
  10. The District Council imposed a condition on the planning permission that required the applicant to submit details of the treatment of the visibility splays and the means of defining the boundary between the visibility splays and the remainder of the application site. Work could not start until the Council had approved those details.
  11. The action group complains about the consideration the Council gave to discharging that condition. The applicant wrote to the Council. He undertook to cut back the vegetation growth on the visibility splays on a regular basis in order to maintain visibility. He also said how the application site would be defined by physical markers on the site. The Council consulted the highway authority who agreed the letter provided a satisfactory basis to discharge the condition.
  12. Mr B considers it was wrong that no plans were submitted as part of the consideration of discharging the condition. In responding to the action group about the complaint the Council has said that the wording of the condition could have been clearer. In commenting to me on this complaint the Council has clarified that it considers the condition is clear and has been satisfied but that the interpretation by the action group was not unreasonable. But there was no requirement or need for the applicant to submit plans.
  13. This was an existing access so officers could see the development as it was and decide whether they considered it to be acceptable. I do not consider it was fault in these circumstances not to require the submission of plans showing the access.
  14. It is not for me to come to a view on whether the access is acceptable in highway and planning terms. The action group obtained a professional opinion that concluded the access was not satisfactory. I cannot decide between differing professional views. The Council has followed the proper process in consulting the highway authority during the consideration of the application, in imposing the suggested conditions and again consulting the highway authority when discharging the condition.
  15. I understand Mr B's point that the hedge is on top of a bank and that it is the bank that obstructs the visibility not the hedge. But this was something the authorities were aware of and gave consideration to. I recognise Mr B disagrees with the assessments made of the acceptability of the visibility but I do not consider there was fault in how the decision was reached.

### **Other applications**

16. Mr B had referred to the way the Council had considered highway matters on two other planning applications in the area. He considered this showed the Council had been inconsistent in the approach it was adopting. I do not consider this warrants any investigation. The key point is how the Council considered the highway aspects of the planning application that is the subject of the complaint. I have enough information to come to a view on that.

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## **Final decision**

17. There was no fault in the Council's consideration of the highway matters when considering the planning application.

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