

Complaint reference:
16 014 813

Complaint against:
East Devon District Council

The Ombudsman's final decision

Summary: Council delays did not prevent Mr B securing a boat concession. The Council properly valued the concession.

The complaint

1. The complainant, whom I shall refer to as Mr B, complained about the way the Council dealt with his application for a boat concession. Mr B complained the Council:
 - delayed processing his application;
 - wrongly referred to the application as a new application when it was a renewal;
 - delayed telling him about the increased charge for the concession; and
 - failed to properly consider the value of the concession.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints of fault where someone says it has caused them injustice. If the Ombudsman finds fault but no injustice, he will not ask a Council to provide a remedy. If he finds both fault and injustice, he may ask for a remedy. The Ombudsman cannot question whether a Council's decision is right or wrong simply because Mr B disagrees with it. He must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, sections 26(1), 26A(1) and 34(3)*)

How I considered this complaint

3. As part of the investigation, I have:
 - considered the complaint and Mr B's comments;
 - made enquiries of the Council and considered the comments and documents the Council provided;
 - considered Mr B's comments on my draft decision.

What I found

Chronology of the main events

4. Mr B ran a boat concession for several years until 2014. In 2014 Mr B's boat was destroyed in a storm. Mr B applied for another concession in February 2016. The application form completed by Mr B says to be considered for the next season the application must be submitted between 1 September and 31 January. The form

says applications received outside that window will be carried forward to the following year.

5. The Council agreed to process Mr B's application for the 2016 year. However, Mr B had not paid the application fee. The Council wrote to Mr B to ask for that, as well as further information, on 13 May. In response Mr B provided some documentation on 2 June, although he did not pay the application fee. The Council chased Mr B for the application fee on 12 July. Mr B paid the fee on 1 August.
6. On 30 August the Council asked Mr B for further information about the loss of a previous boat and insurance details. Mr B provided information on 13 September.
7. The Council told its valuer to value the concession. The valuer produced a report on 11 October. That valued the concession at £600 plus VAT. The Council provided Mr B with that information in the proposed heads of terms document it sent him on 26 October.
8. Mr B disputed the increase in fee as he had previously had a concession for £200. The Council explained it had a duty to obtain suitable fees. The Council told Mr B it considered the evidence supported the fee charged.
9. After further correspondence from Mr B the Council wrote to him on 14 December. The Council agreed to treat Mr B's application as a renewal application and charge him £50, rather than £150 for a new application. The Council reiterated its view about the fees for the concession.
10. Mr B remained unhappy with the Council's decision to charge £600 per year plus VAT and put in a complaint on 6 January 2017. Mr B provided further details on 30 January. The Council responded on 28 February. The Council said it considered the concession fee reasonable. Mr B challenged that and the Council preserved its position. However, the Council offered Mr B the opportunity to pay a £400 fee plus VAT in the first year and £600 plus VAT in the second year. The Council told Mr B before beginning any operation he needed to ensure the commercial endorsement was received from MCA and the boat and landing stage had been inspected and appropriate certificates held.
11. Mr B has not yet accepted the Council's terms.

Analysis

12. The Council's procedure for 'Purchasing Council Property and Acquiring Other Interests in Council Owned Land' covers the application process for concessions. The Council's procedure says the application process takes around 12 weeks but can take longer. In this case the Council received Mr B's application for a boat concession in late February. I am satisfied the Council wrote to Mr B to ask for more information and the application fee on 13 May 2016. While that is within 12 weeks it is clear the Council was not in a position at that point to make a decision on the application. I see no reason the Council could not have asked Mr B for supporting documentation for his application before May 2016. On balance I therefore consider that delay to be fault. The Council accepts that and intends to review its guidance on asking for documentation to support an application for a concession. I welcome that.
13. It is clear though that despite the Council asking Mr B for supporting information for his application on several occasions he has not provided some of the information the Council needs. Mr B also delayed paying the application fee, which delayed the Council valuing the concession. I cannot criticise the Council

for those delays. Although the Council is now ready to proceed with the concession Mr B has not yet signed the agreement to allow him to operate a concession. I appreciate this is because Mr B disputes the amount the Council intends to charge. However, the point here is the Council has been in a position to agree the concession since October 2016. So, even if the Council had asked for the information and payment for the application by the end of March or beginning of April 2016 Mr B would not now be in a different position. That is because it is his failure to provide the required documentation or accept the terms of the concession that are now holding up the concession, rather than fault by the Council. I therefore do not intend to pursue the matter of the early delay asking for information further, particularly as I am satisfied the Council intends to address that in its review of the guidance.

14. In reaching that view I am aware the Council could have decided not to process Mr B's application at all given he did not put it in by the deadline. I welcome the Council's willingness to process the application despite that fact, as a gesture of goodwill. Nevertheless, once the Council decided to process the application it should have asked Mr B for any supporting documentation within a reasonable period of time. I suggest 4-6 weeks would be suitable.
15. I am aware Mr B says much of the documentation the Council has now asked for was provided with his previous boat concession. However, as Mr B has noted, he has not held a boat concession for two years. In those circumstances it is not unreasonable for the Council to ask for up-to-date documentation to support his application. I therefore do not criticise it for asking for documentation which Mr B believes he has provided for a previous concession. I recognise though some documentation cannot be provided until Mr B has bought a new boat. At the moment he is unwilling to do that because he is not happy with the charge for the concession. As I have made clear, the delay now is not due to fault by the Council but rather a dispute about whether the Council's charge is fair. I refer later in this statement to my conclusions on how the Council reached the valuation.
16. Mr B says the Council unreasonably treated his application as a new application when he says it was a renewal application as he had a previous concession. It is clear the Council considers the application a new application given Mr B has not held a concession for two years and intends to buy a new boat. Irrespective of whether it is a new or a renewal application though I am satisfied there has been no loss to Mr B. That is because the Council has agreed to charge the lower renewal fee rather than the higher fee for a new application. I therefore see no reason to pursue the point further.
17. Mr B says the Council delayed telling him about the increase in fees. Mr B seems to believe the Council knew the fee structure would be higher when he initially applied in February 2016, or at least by May 2016 when the Council wrote to him to ask for additional documentation. However, the evidence I have seen satisfies me the Council did not complete the valuation until October 2016. As the Council told Mr B about the valuation later that month I am satisfied there has been no delay. I therefore have no grounds to criticise the Council. Nor do I criticise the Council for not seeking a valuation until October 2016. That is because Mr B's application was not valid until he submitted an application fee. The Council did not receive that until 1 August 2016 and was seeking some additional information from Mr B in the intervening period.
18. Mr B's main concern though is with the increase in charge for the concession. I understand when Mr B last had a concession in 2014 he paid £200 plus VAT.

Now however, the charge is £600 plus VAT. I understand Mr B's concern about the large increase. However, the amount charged for a concession on the Council's land is a matter for the Council. The Ombudsman could not criticise the Council for seeking to obtain the best possible income from its land. I would, however, expect the Council to have properly considered the valuation before telling Mr B about the charge. In this case I am satisfied the Council's valuer completed a valuation. I am satisfied the valuation report is comprehensive, taking into account the charge for other concessions both in the immediate area and in surrounding areas. I am also satisfied the valuer reduced the charge for Mr B's concession compared with those other concessions to reflect the different nature of the concession he will be operating and the fact there would be quieter use during the winter months. I am therefore satisfied the valuation was undertaken properly. Consequently I have no grounds on which I could criticise the Council for the amount it proposes to charge for the concession. In those circumstances I welcome the Council's offer to increase the concession fee incrementally over a two-year period to reduce the impact on Mr B.

19. I have found no evidence to support Mr B's allegation the valuer relied on concessions at beer beach being more expensive when he has shown they are not. Instead, the valuation report says the concessions at beer beach attract considerably lower fees than the other comparisons outlined. The valuation records though that those fees were set in 2010 and are due for renewal in 2017 and therefore not a representation of the current market. So, I am satisfied the valuation does not rely on a misunderstanding about the charge for concessions at beer beach.

Final decision

20. I have completed my investigation and found no evidence fault by the Council prevented Mr B obtaining a boat concession or any fault in the valuation process.

Investigator's decision on behalf of the Ombudsman