

Report

on an investigation into
complaint nos 11 006 104 & 11 001 341
against Cumbria County Council &
Barrow-in-Furness Borough Council

10 September 2013

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

This report has been produced following the examination of relevant files and documents and interviews with the complainant and relevant employees of the Councils.

The complainant and the Councils were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Report summary

Planning Enforcement – Waste Processing

This is a complaint about the use of land for processing waste metal and other materials just a few metres from the complainant's home. I have found evidence of maladministration because of delay. Barrow Borough Council failed to refer the matter to Cumbria County Council at the earliest opportunity. Cumbria County Council did not carry out an adequate investigation when the matter was reported to it. The complainant has had to endure noise, smoke and dust for a prolonged period as a result of these delays.

Finding

Maladministration causing injustice

Recommended remedy

To remedy the injustice:

- Barrow Borough Council should pay £4,500 for the harm caused by its failure to refer the matter to the Waste Planning Authority, the County Council, for three years.
- Cumbria County Council should pay £3,000 for the harm caused by its failure to carry out an adequate investigation once it did become aware of the matter.

Both Councils should each pay £250 to acknowledge Mr X's time and trouble in bringing his complaints to my attention.

Introduction

1. Mr X complains the Councils have failed to protect him from the unauthorised use of land behind his home for processing waste metal and other materials.

Background

2. Mr X tells me he has had to endure nuisance, noise and dust caused by cutting and burning of waste on land behind his home. The nuisance intensified in 2007 when the landowner began recycling waste on the land behind Mr X.
3. Large lorries visit the site to deliver and collect waste. Mr X says the site operates from early morning until late at night, every day. He says he only gets some respite during poor weather, when the men work indoors.

Legal and administrative background

4. Generally, planning permission is needed to change the use of land and/or for developments on land¹.
5. Most local planning responsibilities rest with district councils. Barrow Borough Council is a district council. However the County Council is the planning authority for waste and minerals issues and would normally take the lead on waste enforcement action. Waste planning authorities control the use of land for the storage or disposal of waste².
6. Where there has been a change of use of land without planning permission, the planning authority may not take enforcement action after a period of 10 years beginning with the date of the breach³.

Investigation

7. My investigator visited Mr X and discussed his complaint with him. I have considered documents and photographs he has provided.
8. My investigator has made enquiries of both Councils and considered their responses. He visited both Councils and examined documents from their files. He met with officers of the County Council and interviewed an officer of the Borough Council.

Findings

9. Mr X has been complaining for a long time that the land behind his home was used for processing waste. He reported metal cutting with angle grinders, fires burning plastic from cable, cars, vans and washing machines lifted with heavy machinery. Large vehicles used the track beside his home to deliver and collect waste. Planning authorities do not normally allow waste processing such as this so close to residential areas.
10. Mr X has sent me copies of his letters and the Councils' responses, going back to 1993. Long before this, he had objected to the use of the land behind him and

¹ Section 57 of the Town and Country Planning Act 1990

² Town and Country Planning (Prescription of County Matters) (England) Regulations 2003, SI 2003/1033

³ Section 171B of the Town and Country Planning Act 1990

another area next to it which was used as a scrap yard. His documents record a history of complaints about planning applications, applications for Certificates of Lawful Use and representations to planning appeal enquiries since 1968.

11. In 2007 the problems intensified when the landowner began recycling waste. Mr X made regular complaints to the Borough Council about the site and its impact on him but the Council took no action.
12. Mr X made a complaint to the Borough Council in June 2010 about its failure to act. In its response to Mr X, the Borough Council said that an allegation of this kind was, for planning purposes, a County matter. The Borough Council said that an investigation in liaison with the County Council would take place.
13. Mr X wrote to the County Council in August 2010, requesting information about the site and stating the land behind his home was an unauthorised scrap yard. He asked whether the County Council had ever granted planning permission. In this letter he also made a service request. He asked, if there is a breach of control, whether the Council would stop this use.
14. The Council treated this letter as a request for disclosure of information under the Freedom of Information Act 2000 (a FOI request). In its response the County Council told Mr X that it had carried out a joint site meeting with officers from the Borough Council in July 2010. The County Council went on to say:

“Whilst there was a number of possibly unroadworthy vehicles washing machines, fridges and skips on the site there was no evidence that any breaking up of vehicles, white goods etc for scrap taking place and no significant quantity of scrap metal was present on site, which would have indicated scrap yard use.”
15. The County Council Officer took photographs during the site visit. The photographs show waste skips and storage containers filled with waste materials, disused washing machines and fridges, what appear to be unroadworthy cars and an industrial weighing machine laden with scrap metal.
16. Mr X responded to this letter in October 2010, expressing surprise that officers had not asked him for evidence to support his claim. He sent and referred to photographs which showed men cutting up waste metal, forklift trucks, large skips and lorries visiting the site to collect and deliver loads of waste materials. The County Council says it has no record to show the letter and photographs arrived.
17. In its response to my enquiry, the Borough Council stated there is a history of scrap metal storage on the site behind Mr X's home. There are time limits on when a planning authority may take enforcement action. The Borough Council said the use occurred over a long period of time and has not been overridden by more recent planning applications. It said it was too late to take enforcement action.
18. However, this was not correct. The Borough Council's files show the area behind Mr X's house did not have a history of use for waste recycling.
19. In July 2012 officers of the County Council viewed the Borough Council's planning files for the site. When shown the evidence on the Borough Council's files, the

officers decided the land directly behind Mr X did not have an established waste recycling use.

20. The County Council officers visited the site again. The owner of the land behind Mr X's home also owns the land beside it. On this land he runs a second hand goods business. Recently the County Council granted planning permission to carry out the 'de-pollution of motor vehicles' in a building behind the second hand goods shop. The owner was using the land behind Mr X in conjunction with this business. He claimed he could establish more than 10 years continuous use and so be free from planning controls.
21. The owner did not provide evidence of continued use, nor did he put in a planning application for waste recycling. Soon after, the owner told the County Council he would stop using the site for waste processing.
22. My investigator visited the County Council and met with planning officers. He was told there was clear evidence on the Borough Council's planning file to show the land behind Mr X had been used for light industry, but not waste processing.
23. My investigator showed the County Council officers Mr X's photographs. The officers said if they had seen the photographs sooner, they would have:
 - carried out more monitoring and unannounced visits, including 'out of hours' if necessary;
 - used Mr X's photographs and statement as evidence of unlawful use of the land;
 - given Mr X diary sheets to show the nature and extent of activity on the site.
24. The photographs showed waste recycling, with metal being cut from vans and cars and sorted into bins. The County Council officers pointed out an industrial weighing machine in one of Mr X's photographs. This same weighing machine can be seen on a photograph taken by the County Council during its site visit in July 2010.
25. Mr X tells me that waste recycling and processing has resumed on the land behind him.

Conclusion

26. There is evidence to show maladministration causing injustice to Mr X.
27. The Borough Council decided it was not the appropriate planning authority to deal with a waste use on the site. It should have referred Mr X's complaints to the County Council at the earliest opportunity. Its failure to do so caused a three year delay. This delay is maladministration.
28. There was a joint site visit in July 2010 but it was maladministration to conclude there was insufficient evidence of waste processing on the basis of one visit and without further investigation.
29. It was reasonable for the County Council to treat Mr X's letter of August 2010 as a FOI request. However this letter also contained a service request that needed a planning enforcement response but this did not happen.

30. I would expect that to satisfy itself that there was no unlawful use in this case, the County Council should have returned to the site after its initial visit in July 2010 and following Mr X's letter of August 2010, to monitor use. I would have expected its officers to speak to Mr X about the nature of the use and to check whether he had any evidence that it could use.
31. The County Council's failure to carry out an adequate investigation in July 2010 is maladministration and it has caused an injustice to Mr X.

Injustice and remedy

32. Because of the combined failures of both Councils, Mr X has been seriously affected. He lived next to a site which was used unlawfully for cutting, sorting and processing waste metal and other materials for much longer than was necessary.
33. The failure to control the site caused serious harm to his amenity. He has suffered from loud noise from angle grinders, heavy lorries and machinery. There was dust and smoke from the cutting and burning of metal and other waste materials.
34. The Borough Council should pay Mr X £4,500 for the nuisance he experienced because of its three year delay in referring the matter to the County Council.
35. The County Council should pay £3,000 to Mr X for the nuisance he experienced because of its failure to carry out an adequate investigation in July 2010.
36. Both Councils should each pay Mr X £250 for his time and trouble in bringing his complaints to my attention.
37. The County Council should continue to monitor the site and investigate allegations that are brought to its attention.



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