

Report

on an investigation into
complaint no 10 018 585 about
Essex County Council

8 May 2012

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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 an initial.

This report has been produced following examination of the relevant documents.

The citizens who complained, and the Council, were given a confidential draft of this report and invited to comment. The comments were taken into account before the report was finalised.

Report summary

Subject

In 2006 the then Ombudsman found fault by Essex County Council and Epping Forest District Council in the way the County Council granted a licence for a Waste Transfer Station. He decided the fault had caused an injustice to two residents who had complained to him and who lived close to the site. The Councils accepted his recommendation that they should share the cost of paying £15,000 and £100,000 to the two residents.

In 1999 Mr & Mrs R had been part of a complaint to the District Council. In 2008 they contacted the District Council to seek a similar payment to those recommended by the Ombudsman. The District Council refused so Mr & Mrs R complained to the Ombudsman in 2009.

I asked the Councils to get an independent valuation of Mr & Mrs R's home. The valuer said their home had been reduced in value by £30,000. The District Council accepted the valuation and has paid £12,000 to Mr & Mrs R. The County did not agree with the valuation and has refused to pay anything.

Finding

The fault found in 2006 had a similar impact on Mr & Mrs R as on the two residents who complained at the time. Mr & Mrs R live closer to the site and directly opposite the entrance. An independent valuer says the Waste Transfer Station has reduced the value of their home by £30,000. If they had complained to the Ombudsman in 2006 the Councils would have made a payment to them to reflect that reduced value.

Recommended remedy

I recommend Essex County Council pay £18,000 to Mr & Mrs R as 60% of the £30,000 reduced value of their home.

Introduction

1. In 2006 the then Ombudsman found fault in the way Essex County Council decided to issue a licence for a Waste Transfer Station. He also decided Epping Forest District Council had contributed to the fault. The Ombudsman found that the fault had caused injustice to two residents who lived close to the site and complained to him. The Councils accepted the Ombudsman's recommendation and paid the residents £15,000 and £100,000 to reflect the reduced value of their homes caused by the Waste Transfer Station.
2. Mr & Mrs R also live close to the Waste Transfer Station. In 1999 they complained about it to the District Council. In 2008 they asked the District Council for a financial remedy, similar to that recommended by the Ombudsman in 2006. The District Council refused and Mr & Mrs R first complained to the Ombudsman in 2009.
3. A draft of this report was sent to the County Council, the District Council and to Mr & Mrs R's solicitor. The District Council and the solicitor provided comments. The County did not respond and has been slow to respond to my investigator's enquiries throughout this investigation.

Legal and administrative background

4. A complaint should usually be made to the Ombudsman within 12 months of a person becoming aware of something that affects them. However, the Ombudsman has the power investigate late complaints. The then Ombudsman decided to use that power in this case because he was satisfied by the reasons provided by Mr & Mrs R for submitting a late complaint. He also thought the fault he had found in 2006 may have caused them a significant injustice.

Background

5. In 1980 the County Council granted a licence for a Waste Transfer Station (WTS). Following a complaint from two residents who lived near the site the then Ombudsman investigated and published a report¹. He found fault by the County Council and the District Council. The decision to grant the licence had been made with maladministration. The Ombudsman found that this caused the two residents injustice. They both suffered from noise nuisance and reduced value of their homes.
6. To remedy the injustice the Ombudsman recommended that the Councils explore if the WTS could be relocated. If this was not possible, the Ombudsman recommended the Councils obtain an independent valuation and make a payment to each resident to reflect the devaluation of their homes. The payment

1 <http://www.lgo.org.uk/search/?k=03%2fA%2f17164>

was to be shared between the Councils – 60% to be paid by the County and 40% by the District. Both Councils accepted the recommendations. It was not possible to relocate the Waste Transfer Station within a reasonable period of time so, in November 2007, the Councils paid the residents £15,000 and £100,000.

7. Mr & Mrs R's home is about 135m from the WTS and their drive is almost directly opposite the entrance. They bought the property in 1986 and say the site was then mainly operating as a piggery. They say the WTS was operating at a very low level and was hardly noticeable.
8. Mr & Mrs R say the use of the WTS intensified from 1999 and residents started to experience problems in terms of noise, smell, and general disturbance. They signed a joint complaint to the District Council in 1999; they also signed petitions. At one point they were told there was a possibility the WTS might be relocated but it later became clear that this could not be achieved in the short term.
9. Mr & Mrs R say they saw a press article in April 2008 that made them aware the WTS would not be relocated and that two neighbours had received a payment.
10. In July 2008 Mr & Mrs R's solicitor wrote to the District Council asking for a payment in line with the Ombudsman's report. The District Council said it would not pay Mr & Mrs R because they had not pursued their complaint since 1999.
11. Mr & Mrs R's solicitor complained to the Ombudsman in January 2009. The solicitor argued that his clients had not thought it was necessary to take further action because they knew the matter was being pursued by their neighbours. The solicitor also pointed out that Mr & Mrs R were the only residents of the three in the immediate area who had not received a payment to reflect the reduced value of their home.
12. The then Ombudsman decided to use his power to accept the complaint. He was satisfied by the reasons provided for the delay in submitting the complaint. He also thought Mr & Mrs R may have suffered a significant injustice as a result of the maladministration found in 2006.
13. The District Council agreed to co-ordinate a response from both Councils. In November 2009 it notified the County Council of the Ombudsman's suggestion that both Councils should consider Mr & Mrs R's claim. The District Council proposed the two Councils should get an independent valuation of Mr & Mrs R's property.
14. A firm of independent chartered surveyors valued Mr & Mrs R's property. This was the same firm that had valued the other residents' properties in 2007. They concluded, in July 2010, that the value of Mr & Mrs R's home had been reduced by £30,000.

15. The District Council said it would ask Councillors to agree to pay £12,000 (40% of £30,000) to Mr & Mrs R.
16. The County Council did not accept the independent valuation and asked its own valuers for a valuation. This took some time but in December 2010 the County said its valuer found that the WTS had little or no impact on the value of Mr & Mrs R's property.
17. My investigator suggested that it would make best use of limited public resources if both Councils would agree to make a payment in line with the jointly commissioned independent valuation and allow the investigation to be discontinued.
18. The County Council replied in April 2011 explaining it did not think a financial remedy should be paid to Mr & Mrs R. Its main points were:
 - Mr & Mrs R's property is 135m away and is well screened from the WTS.
 - There are a number of nurseries nearby which generate a lot of traffic movement; there is a traffic impact on their home which is nothing to do with the WTS.
 - The lorries that use the nurseries are bigger and are more likely to have difficulty negotiating the bends than the vehicles that use the WTS.
 - Of the two residents who originally complained to the Ombudsman one lived much closer and was much more affected than the other. In 2006 the County had accepted the closer of the two was much more likely to suffer visual disturbance from traffic and activity on the site.
 - The problems did not deter Mr & Mrs R from buying additional land in 1989. It is unlikely they would have bought more land if they were experiencing problems.
 - There is no observable impact on Mr & Mrs R's home. If there was impact then it is reasonable to assume they would have pursued their complaint as vigorously as the other residents.
 - Mr & Mrs R's home had not reduced in value by £30,000.
 - Local estate agents do not regard the WTS as having a negative impact.
 - Mr & Mrs R's current complaint was prompted by their knowledge of the payments to the two other residents.

- A valuer used by the District had confirmed he had valued Mr & Mrs R's property and the WTS had little effect on value as the area contains a number of businesses.
 - There would be a significant impact on operational services to accommodate a payment to Mr & Mrs R in the current economic climate.
 - The WTS is currently in administration, the use has declined, and it is not certain whether it will continue.
19. Both Mr & Mrs R's solicitor, and the District Council, challenge what the County has said. They point out that Mr & Mrs R live closer to the WTS than one of the two other residents and are directly opposite the entrance. They purchased their home at the same time as one of the other residents. Both the solicitor and the District said that in 1986 the WTS was mainly operating as a piggery and problems associated with the WTS did not start until 1999. Whilst there may be some disturbance caused by other businesses and lorries the same situation existed for all three residents and payments had been made to the other two to reflect the reduced value of their homes.
 20. In addition, Mr & Mrs R's solicitor explained that they are directly disturbed by noise and headlights from traffic using the WTS; he said their sleep is sometimes disturbed. The solicitor questioned the local knowledge of the estate agents referred to by the County and said other local residents had had difficulties selling their homes.
 21. The District Council agreed that the WTS activity had declined but said the site had a new owner and business might return to previous levels of activity.
 22. The District Council said, '*... as [one resident] was found to be entitled to compensation, it is difficult to see why Mr & Mrs R should also not be compensated given that they live closer...*' It also said, '*...all the information that was available and relevant to the [two residents'] claim remains valid and relevant and very little else has changed so it is difficult to see why the County Council still maintain Mr & Mrs R are not entitled to compensation for the same reasons.*'

Conclusion

23. In 2007 the then Ombudsman recommended that a financial remedy should be provided for the residents who had complained to him based on their proximity to the WTS. The amount of the financial remedy was based on a valuation provided by an independent, external valuer.
24. Mr & Mrs R live closer to the WTS than one of those residents and further away than the other. They live directly opposite the entrance. They purchased their home in 1986, the same year that one of the other residents purchased his home.

The same firm of valuers has found that the value of their home has reduced by £30,000.

25. If Mr & Mrs R had complained to the Ombudsman in 2006 I am satisfied they would have obtained a similar remedy to the other residents. They delayed complaining but the then Ombudsman decided to use his power and accept the complaint. There is no justification for treating them differently to the two other residents who have received loss of value payments.

Epping Forest District Council

26. The District Council has paid £12,000 to Mr & Mrs R. This represents 40% of the £30,000 that the valuer decided their home had reduced in value because of the WTS. I am satisfied with the District Council's actions and have not issued a report.

Recommendation

27. I recommend the County Council pay £18,000 to Mr & Mrs R as 60% of the £30,000 reduced value of their home.

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