

Complaint reference:
16 013 084

Complaint against:
Lewes District Council

The Ombudsman's decision

Summary: The Council was not at fault in the way in which it considered the enforcement issues relating to an airstrip close to Mr and Mrs G's home. There was a degree of fault through delay in responding to Mr and Mrs G's complaint. But, this did not cause them significant injustice.

The complaint

1. The complainants, to whom I shall refer as Mr and Mrs G, complained about the way in which the Council has dealt with their complaints about the intensification of use of an airstrip on farmland close to their home. Mr and Mrs G said the Council's failure to restrict activities at the site meant they continued to suffer over flying of their property at low heights with all the nuisance and risk this entailed.

What I have investigated

2. I have exercised the Ombudsman's discretion to investigate matters from August 2015, when the Council undertook a planning enforcement investigation. I have done this because Mr and Mrs G were consistently trying to pursue matters with the Council from that date. In the final section of this statement, I explain what I have not looked at, and why not.

The Ombudsman's role and powers

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 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)*
5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. *(Local Government Act 1974, section 30(1B) and 34H(i), as amended)*

How I considered this complaint

6. I have considered the information Mr and Mrs G provided in support of their complaint, together with that provided by the Council.

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7. I have written to Mr and Mrs G and the Council with my draft decision and considered their comments.

What I found

The Council's Planning Enforcement policy

8. The policy says:
 - the Council has a duty to investigate alleged breaches of planning controls. It has powers to remedy proven breaches by statutory and other means;
 - where officers decide it is not expedient to take enforcement action, they will inform complainants of the reasons for this decision;
 - the Council needs as much information as possible regarding the alleged breach to enable the investigating officer to investigate fully; and
 - officers might ask the person alleging the breach of planning controls to assist them by providing a written log detailing the dates, times, duration and nature of the suspected breach; and
 - if the person reporting the suspected breach of planning controls is unwilling to assist, officers will advise them this may hinder the Council's investigation, due to the difficulty of gathering sufficient evidence.

The 2009 Certificate of Lawful Use

9. This confirmed as lawful: "Use of land at as a farm airstrip catering for light aircraft and microlights. Use of agricultural building for light aircraft storage in association with the farm airstrip. Use of a second agricultural building for light aircraft storage in association with the farm airstrip."
10. It further certified as lawful: "Use of the Site as a private airstrip for pleasure/recreational flying, limited to a) daylight hours only (from sunrise to sunset); b) storage of a maximum of 13 aircraft and microlights within and outside the buildings; and c) annual external aircraft movements of between 69 and 206."

Key events after August 2015

11. In August 2015 the Council approved a planning application by the flying club. As a result of Mr G's representations to the Planning Committee, members asked for the Planning Enforcement Team to investigate activities at the airstrip.
12. Officers wrote to the flying club which owned the airstrip. The flying club responded in late August. Officers were satisfied from the information it provided, and from the lack of evidence to the contrary, that the flying club was not exceeding the provisions of the Certificate of Lawful Use.
13. In the following weeks, Mr and Mrs G wrote several times to the Council about significant changes in activities at the club. At the end of October officers replied that the planning enforcement investigation had found no breaches of planning controls. But, in mid-December Mr and Mrs G again questioned the flying club's claims about the number of aircraft being stored and operated from the airstrip.

The Council's complaint responses

14. Early in January 2016, officers replied to Mr and Mrs G. They said:
 - it would serve no useful purpose to re-examine the considerations which had led to the Council granting the Certificate of Lawful Use in 2009;

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- they considered the issue was that of whether use of the airstrip constituted a material change from the use as limited by the Certificate;
 - it was immaterial that the club had no connection with the farm, or that the owners of the farm had leased the airstrip to the club;
 - they noted what Mr and Mrs G had said about the previous landowner not having stored as many as 13 aircraft. But, this was the authorised number. The club had confirmed it was not exceeding this;
 - the club had said no flights were carried out for hire or reward. The terms of their lease prohibited this. Flying for hire or reward also required aircraft to be registered as public transport. All of their aircraft were private ones;
 - the majority of aircraft had been based at the airstrip for a number of years. The lease also prohibited any flying school, chartering or training at the site;
 - flying was confined to daylight hours. Twin engined aircraft or helicopters could not land at the airstrip, except in an emergency;
 - the number of aircraft movements were difficult to assess. But, the club had said it did not anticipate any appreciable change from previous years. Officers would seek further information about this in March 2016, when the club would have been operating for a year; and.
 - if it became apparent that the the club was exceeding the authorised use, the Council would investigate and take action, if appropriate.
15. Following further representations from Mr and Mrs G in February 2016, officers responded early in September 2016. They said:
- again that they did not propose to re-examine considerations leading to the issue of the Certificate of Lawful use. When the Council had moved from paper records to electronic ones, it had destroyed many of the relevant documents;
 - they still considered the issue was one of whether the current use of the airstrip constituted a material change of use authorised by the Certificate;
 - those changes relating to the airstrip that Mr and Mrs G had identified had no bearing on the uses defined by the Certificate; and
 - if they alleged that the club was exceeding the limitations this imposed, there would be grounds for the Council to investigate further.

The Council's comments

16. Officers told me that:
- Mr and Mrs G had written to the Council periodically but infrequently. But, they had not to date raised concerns with the Council about aircraft flying over their property at low heights, with the associated risk and nuisance;
 - it was unlikely the Council could deal with these matters through planning controls. The Environmental Health Team had also not received complaints about this;
 - the airspace above the airstrip was visible from the Planning office. They also often drove along the road past the airstrip and Mr and Mrs G's home; so
 - they checked for aircraft activity, but had not witnessed an aircraft in the vicinity. To this extent, the Council was regularly monitoring the site; and

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- there were a number of houses located along the road, and there was a village close by. The local parish meeting was active. But, the Council had received no complaints from other residents or the Parish Council. The absence of such complaints indicated that flying activities were low key; and
 - so far Mr and Mrs G's correspondence had focussed on the basis on which the Council had granted the Certificate of Lawful Use. But, if they alleged breaches of this, the Council would investigate accordingly.

Was there fault and if so, was there injustice requiring a remedy?

17. From the information the Council has provided I am satisfied that it initiated an enforcement investigation in August 2015.
18. I would not expect the Council to have relied solely on what the flying club said in response to its enquiries. But, officers have not been able to find evidence of what Mr and Mrs G said about an increase in flying activities in excess of the number the Certificate of Lawful Use permits.
19. This may be because the flights are occurring mainly at weekends. But, Mr and Mrs G have not given any indication of when the flights might be occurring, so as to give officers the best chance of witnessing these. Mr G has told me he does not consider it would be practicable for him to keep diary sheets.
20. So, I do not consider that the Council has acted with fault with regard to the enforcement issues. It can only consider the expediency of enforcement action on the basis of clear evidence of breaches of planning controls which are causing planning harm.
21. The Council has said that Mr and Mrs G have not complained about the risks and nuisance from aircraft flying at low altitudes. I have seen no evidence to the contrary. I do not consider, therefore, that the Council has been at fault in not alerting its Environmental Services Team, or any other relevant regulatory authority. However, it remains open to Mr and Mrs G to approach these services directly, if they wish to pursue matters.
22. I note that the Council took in excess of six months to respond to Mr and Mrs G's letter of complaint in February 2016. I have seen no reason or explanation for why this should have been the case. So, I must conclude that this was unreasonable delay amounting to fault. But, in the absence of evidence of the number of flights exceeding those permitted by the Certificate of Lawful Use, I do not consider that Mr and Mrs G suffered significant injustice. I further note that the Council did apologise for the delay in responding. So, I do not propose to ask it to do anything further to remedy matters.

Decision

23. I can only uphold Mr and Mrs G's complaint in part. For the reasons I have given above, I have completed my investigation.

Parts of the complaint that I did not investigate

24. In accordance with the restriction on the Ombudsman's jurisdiction I have set out in my paragraph 3 above, I have not considered matters prior to August 2015. I have not seen evidence of Mr and Mrs G persistently pursuing complaints with the Council prior to that date.

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25. It would also be difficult to effectively investigate matters that occurred several years ago. Documentary records have been destroyed, and officers will have forgotten what happened, or moved on.

Investigator's decision on behalf of the Ombudsman