

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

Summary: We will not investigate this complaint about planning, licensing and noise nuisance action the Council took. The complaint is late. And Mrs Q has, or could have, appealed to the Planning Inspector or to a court.

---

## **The complaint**

1. J Solicitors complained on behalf of Mrs Q about the actions of Wyre Forest District Council. They said the Council
  - refused Mrs Q's retrospective planning application;
  - served Mrs Q with a planning enforcement notice;
  - refused to renew Mrs Q's licence for her boarding kennels;
  - served Mrs Q with a noise abatement notice;
  - failed to make reasonable adjustments to allow for Mrs Q's ill health.

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

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
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. The law says we cannot normally investigate a complaint when someone can appeal to a government minister or take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal or go to court. (*Local Government Act 1974, section 26(6), as amended*)
5. We cannot investigate a complaint if someone has appealed to a government minister or started court action about the matter. (*Local Government Act 1974, section 26(6), as amended*)
6. We may decide not to start or continue with an investigation if we believe it is unlikely an investigation will lead to a different outcome. (*Local Government Act 1974, section 24A(6), as amended*)

---

## **How I considered this complaint**

7. I considered the information J Solicitors provided. I considered J Solicitors' response to a draft of this decision.

## **What I found**

### **Background**

8. The Planning Inspector acts on behalf of the responsible Government minister. Among other things, the Planning Inspector considers appeals about:
  - a decision to refuse planning permission;
  - a planning enforcement notice.
9. Someone may appeal to a Magistrates' Court about a council's refusal to grant or renew a licence for a dog boarding kennel.
10. Someone may appeal to a Magistrates' Court about a noise abatement notice.
11. Someone may appeal to a County Court if they think a council has acted unlawfully by failing to make reasonable adjustments for their illness/disability.

### **What happened**

12. Mrs Q has a long-term debilitating illness. She ran a dog boarding kennel. She had a licence to run the kennel. She did not have planning permission for it.
13. In 2016 the Council refused Mrs Q's application to renew her licence. She challenged this decision in a Magistrates' Court.
14. In 2017 the Council refused a retrospective planning application Mrs Q and her husband made. They did not appeal this decision. Later the same year, the Council served Mrs Q with a planning enforcement notice. She and her husband appealed to the Planning Inspector. The Planning Inspector rejected their appeal.
15. Also in 2017, the Council served Mrs Q with a noise abatement notice because of the noise coming from her dog boarding kennel. She did not challenge this in court as she was very unwell at the time and for some time after.
16. In 2018 Mrs Q closed her kennel. In 2019 Mrs Q made a freedom of information (Fol) request.
17. J Solicitors complained to us on behalf of Mrs Q in January 2020. They said there was evidential and procedural fault in the Council's handling of all matters. They said these faults came to light following Mrs Q's Fol request, and she complained soon after this. J Solicitors said the Council failed to make reasonable adjustments for Mrs Q's illness. J Solicitors also said we should make reasonable adjustments to take account of Mrs Q's illness and the difficulties this caused her pursuing appeals and a complaint with us.

### **Analysis**

18. We will not investigate this complaint.
19. All the events complained of, including the Council's alleged failure to make reasonable adjustments, happened in 2016 and 2017. So the complaint is late. As I said above, J Solicitors said the faults only came to light after Mrs Q's Fol request. They also believe we should make reasonable adjustments to take account of Mrs Q's illness. However, I will not exercise my discretion and consider this late complaint for the following reasons.

- 
20. Mrs Q appealed to the Planning Inspector about the planning enforcement notice. She also appealed to the Magistrates' Court about the Council's refusal to renew her licence for the kennel. Once someone has used their statutory rights of appeal the law prevents us from investigating the matters appealed. So we have no discretion to investigate these parts of Mrs Q's complaint and cannot do so.
  21. I understand Mrs Q's ill health may have prevented her from appealing to the Planning Inspector about the Council's refusal of her planning application. However, her husband was a joint applicant. It would have been reasonable for him to appeal the Council's decision. In any event, it is not our role to say whether the Council should have approved their planning application. So, even if we were to exercise our discretion to consider this part of the complaint, an investigation by us would not lead to a different outcome.
  22. I understand why Mrs Q did not go to court to challenge the noise abatement notice although it was, presumably, open to her husband to do so. We could exercise discretion to consider this part of the complaint because of Mrs Q's illness. But I will not do so. I say this because the Council served the abatement notice because of the noise coming from her boarding kennel. As the boarding kennel no longer exists, noise is no longer an issue. It is unlikely the Council will prosecute when a noise nuisance does not exist. So there would be little benefit in investigating, nor would an investigation by us lead to a different outcome.
  23. Finally, Mrs Q believes the Council failed to make reasonable adjustments for her to take account of her illness. We would not consider this part of the complaint in isolation when we will not investigate the substantive matters complained of. In any event, it would be reasonable for Mrs Q to go to the County Court if she wants a determination of whether the Council is in breach of the law.

### **Final decision**

24. We cannot and will not investigate this complaint for the reasons given in the Analysis.

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