

**Complaint reference:**  
16 002 197

**Complaint against:**  
Gravesham Borough Council

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

Summary: it was fault for the Council not to consult local residents about an application for advertisement consent but, on the balance of probabilities, the injustice was limited to a lost opportunity for Mr X and his neighbours to make representations. It is unlikely the decision would have been different.

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## **The complaint**

1. Mr X complains that the Council failed to consult him and his neighbours when it was considering an application for express consent for illuminated advertisement signs at a veterinary practice opposite their homes. Mr X and his neighbours say the signs are overbearing and have a detrimental effect on their amenity.
2. Two of Mr X's neighbours authorised him to act as their representative. One neighbour has written to explain the detrimental impact of the signs on her enjoyment of her home.

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

3. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
4. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

## **How I considered this complaint**

5. I considered Mr X's complaint and his correspondence with the Council. I examined the documents for the advertisement consent application on the Council's website and the case officer's report and recommendations.
6. Mr X and one of his neighbours sent photographs showing the view of the signs from their properties when they are illuminated at night.
7. I considered the comments Mr X and the Council made when they responded to my draft decision.

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## What I found

### The relevant law and policy

8. Many signs and advertisements can be displayed without deemed or express consent from the local planning authority. The relevant conditions and criteria are set out in 26 classes in the regulations. (**Schedules 1 and 3 to the Town & Country Planning (Control of Advertisements) (England) Regulations 2007**).
9. If an advertisement does not fall into one of the 26 classes, an application for express consent must be made to the local planning authority.
10. The regulations provide deemed consent for small illuminated advertisements at medical or pharmaceutical services (which includes veterinary services) provided there are no flashing lights or moving parts. The size of the advertisement permitted under deemed consent is no more than 0.3m<sup>2</sup>. An application for express consent must be made to the local planning authority if a larger sign is required.
11. A local planning authority has no duty to consult neighbours before it grants express consent for an advertisement. (**Regulation 13 of the Town & Country Planning (Control of Advertisements) (England) Regulations 2007**).
12. The local planning authority's powers to control advertisements can only be exercised in the interests of amenity and public safety. The regulations say the general characteristics of the locality and the presence of any feature of historic, architectural or cultural interest are all relevant factors to be taken into account. Public safety relates to the safety of highway users.
13. The Council's published policy on control of advertisements says it aims to seek a balance between commercial requirements and the need to maintain and improve the quality of the environment. Each application for express consent is considered on its merits. The Council's overriding concern is to protect the amenity of residential areas and villages. But it recognises there is a need for business premises to display advertisements.
14. The Council's policy says illuminated advertisements in residential areas and villages will be resisted except in special circumstances where a functional advertisement is essential for the operation of the business or activity carried on after normal hours. It says advertisements should not be an over-intrusive feature in the street scene or locality.

### Mr X's complaint

15. Mr X and his neighbours live in detached properties set back from a main road. A veterinary surgery and hospital is on the opposite side of the road. There is no street lighting on this section of the road. The properties are in the Green Belt but they are not in, or adjoining, a Conservation Area. There are no listed buildings close to the veterinary hospital.
16. The veterinary hospital business is open every day. Its website says it has surgeries on weekday evenings until 7:30pm and is open at weekends. It provides emergency treatment and staff are on site 24 hours a day to care for animals admitted to the hospital.
17. In May 2015 the Council received an application for express consent to display six advertising signs at the veterinary hospital. The application included scaled drawings showing the design, dimensions and proposed locations of the signs.

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18. The application included two internally illuminated fascia signs on the front gables of the building facing Mr X's property. A note on the drawings said the contractor would decide the height of the fascia signs on the front gables during the site survey. The application also included an illuminated projecting box sign on the front elevation, and a free-standing, externally illuminated totem sign adjacent to the roadside near the vehicle entrance.
  19. The Council notified the Parish Council and the Ward Councillors. On 16 July the Clerk to the Parish Council confirmed it had no objection to the application.
  20. In July a case officer in the Planning Service visited the site to assess the application and prepare a report. He reported the applicant's view that the existing signs made it difficult for people to identify the business. He said the proposed signs on both elevations were well designed and would not be a danger to highway users. He said the design complied with relevant policies in the Gravesham Local Plan First Review and Gravesham Core Strategy.
  21. The case officer said the design of the signs would not distract highway users. He concluded by saying the proposal complied with local and national planning policy and could be supported subject to the standard advertisement consent conditions. He recommended granting express consent with no conditions attached. His report did not include an assessment of the impact of the proposed signs on amenity.
  22. On 21 July the Service Manager considered the case officer's report and granted express consent for the display of the six advertisement signs under delegated powers.
  23. Mr X and his neighbours only became aware consent had been granted after the advertising signs were installed. Mr X says they are adversely affected by light pollution because the signs stay on all night. He considers the Council should have consulted them about the application because the signs adversely affect their amenity.
  24. I looked at photographs Mr X and a neighbour sent me showing the signs when they are illuminated at night. Mr X says his bedrooms are at the front of his property and face the veterinary hospital. He has had to install black-out blinds to reduce the light pollution.
  25. Mr X complained to the Planning Service about the failure to consult residents and to consider the impact the illuminated signs had on their amenity. Although there was no legal requirement to consult residents, he said the Council could have done so. He queried whether the size of the signs complied with the Council's own policy. The Service Manager said the Council's judgment was the proposed signs would not be harmful to the amenity of surrounding properties because the nearest dwelling was more than 30 metres away. He noted that each property facing the veterinary hospital was set back about 20 metres from the highway.
  26. Mr X was not satisfied with this reply and continued to the next stage of the Council's complaints procedure. The Director noted there was a general presumption in the Council's policy against illuminated signs in residential areas. But he also noted that the business operates outside normal hours and needs illuminated signs, particularly in winter. He accepted that Mr X disagreed with the case officer's assessment of the impact of the signs but said this was a matter of judgment.

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27. At the final stage of the Council's complaints procedure the Chief Executive accepted it would have been good practice for officers to have consulted neighbours prior to determining the application. He considered the failure to consult local residents was fault and apologised to Mr X. He had instructed officers to consider in future whether it would be appropriate to carry out consultation on applications for express consent. He said officers had not imposed any condition on the hours during which the signs could be illuminated because emergency assistance could be sought at any time of the day or night. He said the sign was 1.6 metres high from its apex and it covered 29% of the gable. He said the regulations established the principle of granting consent for illuminated signs on veterinary practices.
  28. Having decided it was fault not to consult neighbours, the Chief Executive went on to consider whether the application might have been refused or amended if they had been given an opportunity to make representations. He discussed this with planning officers. They firmly held the view that the distance between the residential properties and the veterinary hospital meant the impact on amenity was not sufficient to justify refusal.
  29. Mr X accepts it is unlikely that the Council would have refused consent. But he considers the case officer only gave the application superficial consideration and failed to consider the impact on neighbouring residential properties. He considers the case officer could have challenged the need for so many signs and for them to be illuminated all night. He says if he and other residents had been consulted, they would have suggested conditions were attached to the consent to reduce the impact. This may result in smaller signs and a restriction on the hours of illumination. Mr X says residents approached the owner to seek a compromise but he refused to install a timer to switch off the lights.
  30. A planning enforcement officer met the owner and practice manager on 12 May 2016 to discuss the concerns expressed by neighbours and possible options. He suggested the signs a timer switch so that lights would only be switched on when staff were notified that a sick animal was on its way to the hospital. The owner responded that emergency veterinary assistance may be sought at any time of the day or night. He said people transporting animals for urgent assistance needed to be able to easily identify the premises. He pointed out that there is no street lighting on this section of the road. However he has installed blinds at the windows to reduce light emitted from the premises. He also instructed staff to close the blinds when it gets dark.

### **Analysis**

31. The Council accepts it was fault not to consider consulting residents who live opposite the veterinary hospital before it determined the application. Although there was no legal duty to consult, it would have been good practice to seek neighbours' views to assess the impact on their amenity.
32. The case officer's report did not record his assessment of the impact of the proposed advertisements on amenity. His report only refers to his evaluation of the impact on public safety for highway users. That was fault.
33. I considered whether these faults caused injustice to Mr X and his neighbours. They are clearly upset they were not given an opportunity to make their views known and try to influence the decision. But the loss of an opportunity to object to the proposed signs does not necessarily mean the outcome would have been different. The regulations say amenity refers to the impact of advertisements on the street scene, locality and the public sphere. It is not about the private amenity

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of residents. Having considered all the available evidence, I have decided it is unlikely the Council would have refused consent, or imposed conditions restricting illumination, because the business provides a 24 hour emergency service on an unlit stretch of road. Furthermore the regulations support the general principle of permitting illuminated signs at veterinary premises.

34. The Council had to strike a balance between the needs of the business and the impact on amenity. Not everyone who travels to the veterinary hospital will be familiar with its location. The business has permission to operate a 24 hour emergency service so it would be difficult to impose a condition limiting the hours of illumination. The Council was entitled to consider the likelihood of successfully defending an appeal by the owner if it refused consent. The Council also took into account the distance between the residential properties and the front elevation of the business. For these reasons I have concluded that the injustice is limited to a loss of opportunity to make representations. The outcome would not necessarily have been different if the Council had considered residents' views before making a decision.
35. The Council tried to negotiate a compromise with the owner of the business. The owner installed blinds to reduce light emission from the building. I appreciate this has no impact on the intensity of light from the illuminated signs. But the Council cannot compel the owner to alter or restrict the use of signs for which he has advertisement consent.

### **Final decision**

36. For these reasons I have found fault by the Council. The injustice to Mr X and his neighbours is limited to the lost opportunity to make representations and object to the application. The Chief Executive's apology to Mr X, and the decision to consider whether to consult residents on future applications, provides a satisfactory remedy.

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