

The Ombudsman's final decision

Summary: Mr B complains the Council have not consulted properly about access to land before replacing a gate on a cycle route. The Council did not consult properly before it replaced the gate. Mr B and other cyclists have lost the opportunity to comments on the changes and have suffered a loss of access. The Council has agreed to consult on the changes, retake its decision and issue guidance to staff.

The complaint

1. The complainant, whom I shall refer to as Mr B, represents a cycling group and complains the Council has not dealt properly with access arrangements to land because it has not consulted about the replacement of an access point with a kissing gate and has unfairly restricted access for cyclists against Council and Government guidance. Mr B says this has happened on other occasions.
2. Mr B says he and other cyclists have been denied the opportunity to influence the process through being consulted about changes and have had their access unfairly restricted.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we will weigh up the available relevant evidence and base our findings on what we think was more likely to have happened.
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 spoke to Mr B and considered the details of his complaint as well as the Council's response. I reviewed documents sent by the Council and Mr B.

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7. Mr B and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

8. The Council's cycle strategy says, "*barriers which exclude motorcycles also exclude many cyclists.*". It also says, "*It is very important to carry out pre-consultation before any decisions are taken to install a barrier, which will help determine the most suitable (and least suitable) type of barrier for a particular site, local circumstances and expected users, either local or from further afield.*"
9. Government cycle design guidance says that:
- There is a general presumption against access controls (barriers) unless there's persistent and significant problem of antisocial moped/motorbike use that can't be controlled by periodic policing.
 - Access controls that require the cyclist to dismount or cannot accommodate the cycle design vehicle are not inclusive and should not be used.
 - An access control that requires cyclists to dismount will exclude hand cyclists and others who cannot easily walk.
 - An alternative is bollards, which allow cycles and scooters.

(Cycle infrastructure design (LTN 1/20))

What happened

10. Access to land was restricted by an A-frame barrier. The Council received a complaint about access for disabled people.
11. The Council replaced the A-frame barrier with a kissing gate.

Analysis

12. The Council says it changes the barrier type because a disabled user expressed concerns about previous A-frame. I have seen the complaint and Council emails relating to this.
13. In its complaint response to Mr B, the Council said, "*Due to the constraints of the area in question it wasn't feasible to leave the "A" frame in-situ and install another additional gate as a horse style and main gate are already located there. It was therefore decided that changing the "A" frame to a more inclusive kissing gate was the most practical solution whilst maintaining security.*"
14. I have seen photographs of the location. There is a large central gate with a new kissing gate situated to the right. On the left hand side there is a horse style. The photographs of the site show cycle tracks leading up to the horse style, indicating some cyclists are able to pass that way. The Council says, "*cyclists may circumvent the gate altogether should they wish*" but maintains the horse style deters and prevents motorcyclists from passing.
15. There is no evidence the Council has considered different options, or the impact on different types of cyclists, including those with disabilities, adapted cycles, tricycles, recumbent cycles, cycle trailers or other variants. The type of barrier Council installed requires some cyclists to dismount, contrary to design guidance. On the balance of probabilities, some cyclists have had their access restricted.
16. The Council accepts that consultation is good practice and it should have consulted about changes to the access. The Council has agreed that this has happened on other occasions within the past 12 months. This is fault by the

Council. Mr B and the cycling group have lost the opportunity to comment on the proposed change. Some cyclists have had their access restricted.

Agreed action

17. To remedy the injustice caused by the fault I have identified, the Council has agreed to take the following action:

Within four weeks of this decision

- Consult about the changes to the gate and retake the decision about what access arrangements should be sited there.
- Write to Mr B, explaining the Council's new decision.
- Provide guidance to staff that all such changes to access must be subject to a full and proper consultation.

Within eight weeks of this decision

- Make any necessary changes to the configuration of the gate.

Final decision

18. I have found fault by the Council causing injustice to Mr B. I have now completed my investigation.

Investigator's decision on behalf of the Ombudsman