

**Case 200602550: The City of Edinburgh Council**

**Summary of Investigation**

**Category**

Local government: Roads and transport/parking

**Overview**

The complainant (Mr C) raised concerns about The City of Edinburgh Council (the Council)'s introduction of resident parking bays on the street Mr C resides (the Street), which he said had been done without road safety assessments being carried out. Mr C was also concerned that the decision to introduce the new parking bays did not take account of the fact that planning permission had been granted for a development (the Development) that led to 100 additional cars using the Street. Mr C complained that the resulting situation was dangerous in terms of road safety.

**Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) changes to parking on the Street were introduced without any road safety assessments being carried out by the Council (*not upheld*); and
- (b) the decision to make changes to parking did not take account of the fact that the Council had granted planning permission for the Development, which led to 100 additional cars using the Street (*not upheld*).

**Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 30 November 2006, the Ombudsman received a complaint from a man, referred to in this report as Mr C, about the introduction of new resident parking bays on the street Mr C resides (the Street) without road safety assessments having been carried out. Mr C was also concerned that the introduction of new parking bays did not take account of The City of Edinburgh Council (the Council)'s decision to grant planning permission for a development involving an office block and a residential block (the Development), which led to 100 additional cars using the Street. Mr C believed that the resulting situation was dangerous in terms of road safety.

2. The complaints from Mr C which I have investigated are that:

- (a) changes to parking on the Street were introduced without any road safety assessments being carried out by the Council; and
- (b) the decision to make changes to parking did not take account of the fact that the Council had granted planning permission for the Development, which led to 100 additional cars using the Street.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading all the complaint correspondence between Mr C and the Council. In addition, I obtained copies of:

- The Road Traffic Regulation Act 1984 (the Act);
- The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 (the Regulations);
- The Corporation of Edinburgh (Traffic Regulation; Restrictions on Waiting, Loading and Unloading, and Parking Places) Order 1973;
- The City of Edinburgh Council (Traffic Regulation; Restriction on Waiting, Loading and Unloading, and Parking Places) (Variation No 1) Order 2004 – TRO/03/23 (the Traffic Order);
- A report, dated 3 April 2003, approved by the Council's Director of City Development, recommending that statutory procedures for the Traffic Order should commence;
- A letter dated 20 May 2003 from the Council to 56 interested bodies and associations inviting comments on the proposed Traffic Order;
- A letter dated 26 September 2003 from the Council to the same interested bodies and associations inviting formal objections to the Traffic Order;

- A notice that appeared on street furniture giving notice of the proposed Traffic Order and inviting objections;
- An advertisement placed in a national newspaper on 26 September 2003 giving notice of the proposed Traffic Order and inviting objections;
- An advertisement placed in a national newspaper on 16 January 2004 giving notice that the Traffic Order had been made and that its validity could be challenged in the Court of Session within six weeks;
- A report to the Council's Development Quality Sub-Committee of the Planning Committee (the Committee) dated 17 January 2001 regarding a planning application for the Development and recommending approval;
- Minutes of the Committee's meeting of 17 January 2001;
- A Transport Assessment commissioned by the developer and submitted to the Committee;
- A report to the Committee dated 8 July 2003 regarding an amendment to the Development; and
- Minutes of the Committee's meeting dated 17 September 2003.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

**(a) Changes to parking on the Street were introduced without any road safety assessments being carried out by the Council; and (b) the decision to make changes to parking did not take account of the fact that the Council had granted planning permission for the Development, which led to 100 additional cars using the Street**

5. As Mr C's two points of complaint are linked, I will deal with them together in this report.

*Mr C's complaint*

6. In his complaint to the Ombudsman, Mr C said that in early October 2006 the Council introduced new resident parking bays at his end of the Street. He said this made that part of the Street only wide enough for one car to drive along at a time and this posed a road safety problem. Mr C said the changes introduced a 'Russian roulette' situation, causing great danger to drivers and pedestrians as cars raced to get from one end of the Street to the other before their route was blocked by cars coming the other way. Mr C's key concern was that no road safety assessment had been carried out prior to the parking bays being introduced.

7. In a linked point, Mr C said the dangerous situation he perceived to exist was exacerbated by the fact that the Council had granted planning permission for the Development, which he said led to 100 additional cars using the Street. Mr C believed this should have been taken account of when the parking bays were introduced. In addition, Mr C said that during the Council's consideration of the planning application for the Development they had stated, in response to representations from members of the public, that increased traffic flow from the Development would not pose a problem because the Street was wide enough for two cars to pass each other. Mr C said, therefore, that the decision to introduce parking bays on the Street went against the argument that had been used to answer concerns about the impact of the Development on road safety.

8. Mr C believed that the Council should have a published policy on changing parking and other road markings, analysing how changes will affect traffic flow and obtaining assessments of proposed changes on road safety.

#### *Statutory background*

9. The Act, in Part 1, Sections 1 and 2, gives Traffic Authorities the power to make Traffic Regulation Orders (TRO) which may restrict or regulate the use of a road or any part of a road. The Act, in Schedule 9 Part 4, also gives Traffic Authorities the power to vary or revoke a TRO.

10. The Regulations, made under the Act, specify who must be consulted before a TRO is made, how proposals should be published and notified, and how objections can be made. In Paragraph 7 of the Regulations, they make clear that objections to a TRO must be made before the end of the objection period (which is not less than 21 days from the time at which the proposals are published).

#### *Documentary evidence relating to the Development*

11. On 17 January 2001, the Committee considered a report on a planning application for the Development. The report stated that the Council's Transportation Department had no objections to the Development (subject to conditions which are not relevant here). A number of representations from members of the public were noted in the report, although none of those related to concerns about road safety issues resulting from the Development. In the report's assessment of the application, one of the factors highlighted for analysis was 'whether there are any implications for road safety'. The report

concluded, in light of the fact that the Council's Transportation Department had no objections, that the Development was acceptable in that regard. In addition to the report, the Committee considered a Transport Assessment commissioned by the developers which concluded that changes in traffic flows as a result of the Development would be negligible.

12. The minutes of the Committee's meeting of 17 January 2001 recorded that members of the public who made oral representations raised the issue of road safety and of access, traffic and parking. Those concerns were considered before the Committee decided to approve the application.

13. On 17 September 2003, the Committee considered a report on a planning application to amend the Development by creating flatted housing above a floor of offices. No representations were received from the Council's Transportation Department. The report noted that one of the representations received from a member of the public expressed concern that the Development would create parking problems and would impact on the surrounding road network. In terms of road safety, the report concluded that the proposed amendments to the Development meant the situation was largely unchanged from that which existed when the Development was approved in 2001. The minutes of the Committee's meeting of 17 September 2003 record that the planning permission was granted.

*Documentary evidence relating to the Traffic Order*

14. On 3 April 2003, the Council's Director of City Development approved a report which proposed to commence the statutory procedures for making amendments to Edinburgh's Controlled Parking Zone by making the Traffic Order. The report stated that representations asking for additional parking spaces to be made available had been received from residents in most zones and that more permits were issued than there were parking spaces. The Traffic Order aimed to alleviate that problem.

15. On 20 May 2003, the Council wrote to 56 organisations and associations with a potential interest in the proposed Traffic Order inviting their comments. This included a number of residents' associations and the Police. On 26 September 2003, the Council wrote to the same organisations and associations and invited formal objections to the proposed Traffic Order.

16. Also on 26 September 2003, the Council placed an advertisement in a national newspaper which gave details of the proposed Traffic Order and invited objections to be submitted by 17 October 2003. A notice was also placed on street furniture in the Street.

17. On 16 January 2004, the Council placed an advertisement in a national newspaper stating that the Traffic Order had been made and giving notice that the validity of the Traffic Order could be challenged in the Court of Session within the following six weeks.

*The Council's response to the complaint*

18. The Council said the Traffic Order had been made in line with the Regulations and there had been an opportunity for members of the public to submit objections. They said no objections were received about the proposals affecting the Street. The Council said that, since members of the public had an opportunity to object at the time the Traffic Order was made, they did not consider that it was reasonable for Mr C to challenge it after that time. They also pointed out that the validity of the Traffic Order was open to challenge in the Court of Session at the time.

19. The Council confirmed that there was no duty imposed on them to carry out road safety assessments when placing parking bays on streets. They explained that, prior to the resident parking bays being introduced, there were yellow line restrictions operating on the Street between 08:30 and 17:30 Monday to Friday. They pointed out that outwith these times anyone could park on the yellow lines.

20. The Council said they had no formal guidelines or procedures setting out the considerations which should be taken account of prior to making a TRO. They said draft orders were prepared by professional staff who prepared reports for consideration by the Director of City Development, who had authority to commence statutory procedures.

21. The Council said that in the professional judgement of staff dealing with the proposed Traffic Order, traffic surveys were not required because there was no reason to believe that traffic volumes were hazardous or that they would become hazardous as a result of the new parking bays being introduced. They said that the statutory consultation process had not prompted any suggestion that this view was wrong.

22. I asked the Council to explain their normal practice when members of the public raised concerns about road safety and I asked them why they had not carried out a road safety assessment in light of Mr C's concerns.

23. The Council said they regularly received letters and telephone calls from members of the public expressing concerns about road safety. They said such concerns were investigated by staff. They said inspections were made by local road inspectors and engineers and, where it was considered that there might be a road safety issue, specialist advice was sought from the Council's Accident Investigation and Prevention Team and the Police to establish whether there was any history of accidents or potentially hazardous incidents. They said that if those investigations revealed potential hazards then more detailed investigation could be carried out by means of a variety of traffic surveys, to quantify traffic volume and speed, traffic flow and driver behaviour. The Council said that traffic modelling could be carried out to investigate the implications of any proposals to alter traffic management and that an Independent Road Safety Audit could be carried out into the safety implications of such changes. They said, however, that all these activities were expensive and time consuming and involved diverting resources from other activities. The Council said that the full range of activity was not carried out in response to every concern expressed, but the level of response was escalated as judged necessary on the basis of the initial investigation.

24. The Council said that, in this case, they did not feel investigation of Mr C's concerns was required. They said that in coming to that view they had borne in mind that, at the time the Traffic Order was made, no objections were submitted, either by members of the public or the Police or any other consultee and that there was no evidence from the Council's Accident Investigation and Prevention Team, who monitor safety on a continual basis, of a problem. The Council said that since the Traffic Order has been in place, no concerns have been expressed by the Police, local roads inspectors or members of the public (apart from Mr C). The Council confirmed that their staff remained of the opinion that the additional parking bays had not given rise to a road safety hazard and there was no reason to expect that the configuration of the parking bays created a hazard. They said that further investigations of traffic volumes and speed and driver behaviour could have been made, but they concluded that, in this case, there was insufficient evidence of a hazard to justify diversion of staff resources from other tasks.

25. The Council confirmed they had no intention of removing the parking bays from the Street. They explained that removal of the parking bays would require a new Traffic Order being made and that such an order would be likely to provoke statutory objections from other residents on the grounds that resident parking bays were being unnecessarily lost. The Council said they would need to have convincing grounds for defending against such objections, which would be absent given that there was no evidence of a road safety hazard.

26. With regard to the Development, the Council confirmed that they had no record of having stated that there would not be a road safety problem on the Street due to the fact that it was wide enough for two cars to pass each other. The Council said the planning permission for the Development did not contain any conditions relating to the Street.

*(a) and (b) Conclusions*

27. Mr C believes that a road safety assessment should have been carried out prior to the decision being taken to introduce new parking bays on the Street. However, the Act and the Regulations impose no duty on the Council to carry out road safety assessments prior to making such changes. The Council cannot, therefore, be said to have failed to fulfil their duties in that regard.

28. I have also considered the question of whether the Council should have carried out a road safety assessment once Mr C raised his concerns about the safety of the Street. In this respect, I note that the Regulations do not provide for objections to be raised after a TRO has been made. Consequently, Mr C's objections have come too late, as the proper time for him to have raised objections to the placing of the parking bays was at the time the Traffic Order was made.

29. Notwithstanding, I did want to confirm that the Council had thoroughly considered whether or not they should take action to investigate Mr C's safety concerns once he had raised them. I am satisfied that the reasons given by the Council for not undertaking detailed investigations are persuasive. The Council have explained that there must be, in the professional opinion of their staff, enough evidence to indicate the existence of a potential safety hazard before resources are devoted to investigating it. In this case, the Council did not consider that there was and have provided reasonable explanations to support



that view. In the circumstances, and in the absence of maladministration, I agree with that view.

30. Mr C also believes that the Development, by increasing the number of cars using the Street, exacerbates the road safety problem he perceives as existing. However, I note that the Council gave full consideration to road safety issues when the Development was approved in 2001 and when it was subsequently amended in 2003. At the time of making the Traffic Order, the Council were fully aware that planning permission had been granted for the Development and, therefore, would have been able to take account of any potential issues affecting traffic in the area as a result of the Development.

31. Mr C is of the view that the introduction of parking bays on the Street does not take proper account of the impact of the Development, but I have seen no evidence to support his view. I also note that there is no documentary evidence to support Mr C's statement that the Council, in responding to representations at the time the planning application was being considered, referred to the Street being wide enough for two cars to pass in order to reassure members of the public about their safety fears.

32. In light of the above, I am satisfied that there was no maladministration on the Council's part in this case. Consequently, I do not uphold head of complaint (a) and head of complaint (b).

**Explanation of abbreviations used**

Mr C	The complainant
The Street	The street Mr C lives on
The Council	The City of Edinburgh Council
The Development	A development consisting of a residential block and an office block
The Act	The Road Traffic Regulation Act 1984
The Regulations	The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999
The Traffic Order	The City of Edinburgh Council (Traffic Regulation; Restriction on Waiting, Loading and Unloading, and Parking Places) (Variation No 1) Order 2004
The Committee	The Council's Development Quality Sub-Committee of the Planning Committee
TRO	Traffic Regulation Orders