

## Scottish Parliament Region: South of Scotland

### Case 200800438: Scottish Borders Council

#### Summary of Investigation

##### **Category**

Local government: Roads and transport/parking

##### **Overview**

The complainant (Mrs C) complained about parking restrictions proposed for introduction opposite her home. She also expressed her dissatisfaction at Scottish Borders Council (the Council)'s approach to reducing the impact of heavy goods vehicles entering and leaving commercial premises opposite her home.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that the Council:

- (a) introduced excessive parking restrictions on X Street without justifiable reason (*not upheld*); and
- (b) acted unreasonably when deciding not to introduce protective bollards outside Mrs C's home (*not upheld*).

##### **Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mrs C) and her husband (Mr C) live in X Street, Peebles. Directly opposite her home is the entrance to a commercial property operated by a local business (the Business). Mrs C said that, over a number of years, she and Mr C experienced damage to their property and disturbance from the regular arrival and departure of heavy goods vehicles (HGVs) at the Business.

2. Mrs C complained to Scottish Borders Council (the Council) that the noise and vibration of the HGVs had caused damage to her property and that, on more than one occasion, her garden wall had been damaged by HGVs mounting the pavement and hitting it when negotiating the Business's entrance (the Entrance).

3. In 2008, the Council proposed the introduction of parking restrictions adjacent to the Entrance. Mrs C complained that the introduction of such restrictions was unjustifiable as there was no traffic congestion in the street other than the 'traffic interference' caused by HGVs reversing into the Entrance. She noted that the proposals for the parking restrictions did not mention access to the Business in the Statement of Reasons and expressed her view that the restrictions would only inconvenience local residents. Mrs C also complained that the Council failed to provide protective barriers on the pavement outside her property to protect her wall from damage by the HGVs.

4. Dissatisfied with the Council's response to her complaints, Mrs C brought her concerns to this office in July 2009.

5. The complaints from Mrs C which I have investigated are that the Council:

- (a) introduced excessive parking restrictions on X Street without justifiable reason; and
- (b) acted unreasonably when deciding not to introduce protective bollards outside Mrs C's home.

### **Investigation**

6. In order to investigate this complaint, I reviewed complaint correspondence between Mrs C and the Council. I also obtained further evidence from the Council regarding their operational procedures and reviewed relevant guidance. I have not included in this report every detail investigated

but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

7. I am aware that Mrs C complained to the Council in 1994, raising similar concerns regarding HGV manoeuvres at the Entrance and the Council's failure to provide bollards to protect her boundary wall. Those complaints were considered by the Commissioner for Local Administration in Scotland and were not upheld. I am, however, satisfied that the complaints considered in this report represent new issues, resulting from amendments to the Council's Traffic Regulation Order.

**(a) The Council introduced excessive parking restrictions on X Street without justifiable reason**

8. Mr and Mrs C live on the South side of X Street, Peebles. The Entrance is directly opposite their home, on the North side of the street. Mrs C told me that since she moved there over 25 years ago, HGVs have used the Entrance. To access the Business's premises, they reverse from X Street through the Entrance, which regularly results in the front, cab section, of the vehicles mounting the pavement. Mrs C provided a number of photographs showing HGVs negotiating the Entrance and mounting the pavement outside her property. The photographs show clear evidence of HGVs mounting the kerb opposite Mrs C's home and their proximity to Mrs C's property.

9. Mrs C submitted copies of two letters sent by the Council in 1991 and 1992. On 6 June 1991, the Council's Director of Roads and Transportation (Director 1) wrote to the Business. He suggested that the problem of HGVs mounting the pavement opposite the Entrance could be avoided by allowing the vehicles to turn within the Business's premises. Director 1 wrote to the Business again on 6 November 1992, noting that further complaints had been received about HGVs mounting the pavement outside Mrs C's property. In his letter, he referred to previous correspondence and stated 'Your suggestion, referred to in your letter, that a 10m length of road either side of your entrance be given a parking ban is unlikely to reduce these occurrences. What would improve the situation is for parking at [the Business] to be regulated to allow delivery vehicles to turn within the premises'.

10. On 27 January 2006, the Council presented a proposal to the Area Committee meeting, to make a number of amendments to the Peebles Traffic

Regulation Order. Among the suggested amendments was an increase in parking restrictions on X Street. The amendment was proposed as follows:

'A 'no waiting 8:00am to 6pm Monday to Saturday' restriction at the junction of [X Street] at [the Entrance] to improve traffic manoeuvres at the access. The plan would need to show a reduction in length on [X Street] to 5m to the east of the access.'

'[A resident of X Street] ... had expressed her concerns relating to the difficulties caused by large delivery vehicles, [the Business]'s employees parking cars on [X Street], Peebles and that the 20mph advisory speed restriction was being ignored, the perceived lack of use of [the Business's other entrance] and [the Business]'s lack of consultation with [X Street] residents.'

11. The proposed parking restrictions would result in a restricted zone covering the Entrance itself and measuring 5 metres to the East and 10 metres to the West of the Entrance.

12. All amendments proposed to the Traffic Regulation Order were agreed by the Area Committee pending completion of the statutory consultation process. The consultation process commenced in November 2007. Members of the public were able to view a draft version of the revised Traffic Regulation Order and were invited to submit any objections to the proposed amendments by 31 January 2008.

13. Mr and Mrs C both submitted objections as part of the consultation process. I was not provided with a copy of the draft version of the Traffic Regulation Order, however, Mrs C noted in her objection letter that it had stated the reason for the amendments as being 'for the purpose of relieving or preventing congestion of traffic in various streets in Peebles'. She argued that X Street did not suffer from congestion. The only traffic problems were caused by HGVs negotiating the Entrance. Mr and Mrs C found the restrictions at the Entrance itself to be appropriate, but felt that the addition of further restrictions at either side of the Entrance was unnecessary. Mrs C noted that parking restrictions were in force on the South side of X Street, immediately outside her property. She considered that it was the introduction of these restrictions in 1985 that provided the space for HGVs to be able to turn into the Entrance. Mr and Mrs C did not feel that the introduction of further parking restrictions would improve the situation. They suggested that improvements be made to

the Entrance itself to better facilitate HGV manoeuvres or for the Council to reiterate their prior request for the Business to encourage vehicles to turn within the curtilage of their premises.

14. The Area Committee met on 25 February 2008 to discuss objections to the proposed amendments to the Peebles Traffic Regulation Order. A report which was produced for the meeting noted that 21 objections had been received to the proposals. Six objections specifically related to X Street and were summarised as having raised concerns that the proposals were unnecessary and would do nothing to ease congestion. The report, which was compiled by the Council's Director of Technical Services (Director 2), clarified that the proposed double yellow lines on X Street were intended to keep the Entrance clear of parked vehicles and would be little different to white 'H' markings that were already in place. Director 2 asked that it be noted that the reason for introducing these new restrictions was to improve traffic manoeuvres at the Entrance.

15. The minutes for the Area Committee's meeting on 25 February 2008 confirm that committee members received details of objections submitted regarding the proposed amendments to the Peebles Traffic Regulation Order. The Area Committee agreed to the introduction of a 'no waiting at any time' Monday to Saturday 8am – 6pm restriction at [the Entrance] to improve traffic manoeuvres'.

16. On 11 February 2009, Mrs C submitted a formal complaint to the Council. She reiterated the problems that she had experienced over a number of years regarding the close proximity to her property of HGVs negotiating the Entrance. She complained that the Council failed to take action in regard to ensuring that vehicles turned within the Business's premises. Furthermore, she considered the introduction of the new parking restrictions to be ineffective and excessive. Mrs C suggested that alternative options were available to address the problem of HGVs manoeuvring at the Entrance. She also complained that the parking restrictions were to be enforced on Saturdays when the Business was closed.

17. The Council responded to Mrs C's complaint on 20 February 2009. In their response, they noted that all necessary consultations had been carried out to amend the Peebles Traffic Regulation Order and that the Area Committee had ultimately approved the amendments. The Council advised that they approached the Business in June 2008 and it was agreed that all vehicles that were able to turn within the Business's premises, would. The Business

reportedly advised that the number of commercial vehicles using the Entrance had drastically reduced over the years. The Council said that, as the Entrance had been in use for over 25 years without any road safety issues being raised during that period, they had no reason to redirect traffic generated by the Business.

18. In response to the Council's comments, Mrs C highlighted the fact that no parking restrictions had been introduced at the Entrance during the preceding 25 years. She suggested that traffic volume had increased during that period and questioned why restrictions were now being introduced given the Council's comment that there had been no road safety concerns to date. Furthermore, she felt that the reduction in size and numbers of commercial vehicles using the Entrance further negated the need for increased parking restrictions. The Council responded to Mrs C's letter on 27 April 2009, reiterating that the new parking restrictions had been proposed and agreed after following the appropriate consultation process.

19. When investigating this complaint, I asked the Council whether any technical assessments or traffic analyses were carried out to establish the need for further parking restrictions in X Street. In response to my enquiry, the Council explained that there are no 'hard and fast' rules regarding analysis of the need for parking restrictions. They clarified that common sense and professional judgement play a large part in the decision making process. The Council advised that, in this case, the Business had previously contacted them to request double yellow lines and a loading/unloading restriction. After considering the objections to the proposed changes to the Peebles Traffic Regulation Order, the Area Committee agreed to reduce the new parking restrictions to 'no parking Monday to Saturday 8.00am to 6.00pm'. The Council further advised that the proposed double yellow lines were intended to keep the Entrance clear of parked vehicles and would be little different to the existing white 'H' lines. The new restrictions were also intended to improve traffic manoeuvres at the Entrance.

20. The Council provided me with a map of X Street and photographs of the Entrance showing the extent of the new parking restrictions as being essentially the same as the existing white 'H' lines. I visited Peebles and examined the Entrance on 22 December 2009. The new restrictions were not yet in place, however, I noted that they could potentially lead to the loss of available parking

space for one car in addition to the area already restricted by the white 'H' lines. I also noted that there were cars parked on the 'H' line at the time of my visit.

21. When commenting on a draft version of this report, Mrs C and the Council both confirmed that the new parking restrictions had now been in place for some time. Mrs C told me that the new restrictions had not improved traffic manoeuvres at the Entrance.

*(a) Conclusion*

22. The evidence that I have seen suggests that both Mrs C and the Business agree that HGV manoeuvres at the Entrance are problematic. The Business requested the introduction of stricter parking restrictions for better manoeuvrability of vehicles visiting their premises. Mrs C complained that the limited space that those vehicles had to manoeuvre resulted in HGVs mounting the pavement outside her property, causing noise disturbance and damage. Mrs C proposed that the problem could be resolved by the HGVs turning within the Business's premises or by the Business using an alternative entrance. The Council have demonstrated that they recognised that the Entrance was causing problems for both parties.

23. I accept the Council's position that, as there were no road safety concerns in X Street, there was no cause for them to take enforcement action regarding the flow of traffic from the Business. Whilst my investigation did not consider previous complaints raised by Mrs C, I found that the letters sent by Director 1 to the Business on 6 June 1991 and 6 November 1992 provided relevant background information. These show that the Council considered Mrs C's suggestion of requiring vehicles to turn within the Business's premises at that time. I acknowledge Mrs C's view that this evidently indicated that the Council agreed that having vehicles complete their manoeuvres within the Business's premises would resolve the issues that she complained about. Although I was not provided with further correspondence in response to Director 1's letter, it is clear that the Business did not agree to this suggestion and that they subsequently requested the introduction of parking restrictions sometime prior to November 1992.

24. Generally, I consider that the Council had more than one option available to them when considering how best to address the issues raised by Mrs C and the Business. I am mindful of the length of time that passed between Director 1's letters and Mrs C's current complaint and the fact that different

Council staff are now involved in considering the matter. The decision as to whether the Council should further explore the possibility of HGVs turning within the Business's premises or using an alternative entrance, or whether new parking restrictions should be introduced, was a matter for the professional judgement of Council staff. I am satisfied that the Council have been able to demonstrate that they considered other options prior to proposing the introduction of new parking restrictions, as well as the extent of any impact that the new restrictions would have on local residents. I also note the Council's comments suggesting that the Business have agreed that vehicles will turn within their premises where possible. I am further satisfied that the new restrictions were proposed appropriately through amendments to the Peebles Traffic Regulation Order with representations being sought from the public prior to consideration by the Area Committee.

25. The public consultation of November 2007 stated that the new parking restrictions were being proposed to address traffic congestion. This was inaccurate. I consider that this may have caused some confusion and that such errors could potentially influence the nature of objections submitted by consultees. Ultimately, however, I note that the proposals were approved in January 2006 based on the correct reasons, that objections highlighted the issue of HGVs using the Entrance and that the error was corrected before the Area Committee considered their position. I am, therefore, satisfied that the error in the consultation document did not affect the outcome of the consultation process.

26. In all of the circumstances, I do not uphold this complaint.

*(a) Recommendations*

27. I have no recommendations to make.

**(b) The Council acted unreasonably when deciding not to introduce protective bollards outside Mrs C's home**

28. In her complaint to the Ombudsman, Mrs C stated that her property had been damaged by HGVs using the Entrance. She explained that vehicles reversing into the Entrance regularly mounted the pavement outside her property, occasionally striking her garden wall. She also said that the noise and vibration caused by the close proximity of the HGVs had resulted in structural damage to her property.



29. Mrs C said that she had complained about HGVs mounting the pavement for many years and, as early as 1985, had requested that the Council put a preventative bollard or barrier on the kerb. She was reportedly advised by the Council that this would represent a danger to blind pedestrians and, therefore, could not be approved. Mrs C repeated her request for a barrier or bollard on a number of occasions over subsequent years. After pursuing the matter with the Council again in 1994, Mrs C was advised that, as well as presenting a problem for blind and partially sighted pedestrians, the introduction of a barrier or bollard would leave insufficient space for prams and wheelchairs and would obstruct snow clearing equipment. In 1994, Mrs C pursued her complaint with the Commissioner for Local Administration in Scotland. However, the Commissioner found that the Council had considered all relevant factors relating to the introduction of a barrier or bollard and concluded that it would be inappropriate for him to become involved in Mrs C's complaint.

30. Mrs C said that in November 2006 the Area Committee approved the introduction of bollards outside her property in addition to the increased parking restrictions. She also said that, on 26 February 2008, the Council's Technical Services department confirmed verbally over the telephone that bollards would be provided. However, in June 2008, Mrs C was advised that the measurements for the pavement had been noted incorrectly and that it would be too narrow for the bollards.

31. On 25 June 2008, Mrs C's local councillor (the Councillor) visited X Street along with Director 2. Mrs C said that both visitors agreed to the introduction of a kerbside railing at that time, but that this was later refused. On 11 February 2009, Mrs C raised a further complaint with the Council regarding their failure to provide bollards outside her property.

32. The Council responded to Mrs C's complaint on 20 February 2009. They explained that, at the time of the proposed amendments to the Peebles Traffic Regulation Order, the Councillor had asked why no bollards or barrier had been placed on the pavement outside Mrs C's home. The Council's Technical Services department reviewed the site and its history and concluded that insufficient space would be available to allow unimpeded passage of wheelchairs, prams and snow clearing equipment. The Council told me that, at the site visit on 25 June 2008, Director 2 offered to place some bollards hard up against Mrs C's garden wall to protect it from any impact from HGVs negotiating the Entrance but that this offer was declined by Mrs C. The Councillor

suggested placing a narrow barrier at the kerbside. As this would be situated in close proximity to Mrs C's neighbour's gate, the neighbour's consent was required. However, the neighbour did not consent to the introduction of the railing.

33. Mrs C responded to the Council's letter on 19 March 2009. She disputed their comments regarding the introduction of bollards against her wall, stating that this was not discussed at the 25 June 2008 site visit. She suggested the available pavement width would be the same whether the bollards were against her wall or at the pavement's edge.

34. When investigating Mrs C's complaint, I asked the Council to provide me with copies of their internal guidance for determining the appropriateness of having bollards or other barriers on pavements. The Council provided me with their 'Technical Guidance: Street Furniture' and 'the Department for Transport: Inclusive mobility guidance' (hereby collectively referred to as the Guidance). With regard to the width of pavements, the Guidance states the following:

#### '3.1 Widths

A clear width of 2000mm allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints 1500mm could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another. The absolute minimum, where there is an obstacle, should be 1000mm clear space. The maximum length of restricted space should be 6 metres.'

35. With regard to Street furniture, the Guidance states:

'Street furniture can cause problems for both wheelchair users and for people who are visually impaired. It is essential, taking account of heritage issues, to consider both the position of any furniture and the means of making it apparent to people with reduced vision.

Posts, poles, bollards etc should be positioned to leave at least the minimum footway widths given in section 3.1 ... If they are placed on the road side of the footway, they should be at least 500mm away from the edge of the carriageway, increased to 600mm where there is severe camber or crossfall.'

36. Further advice in the 'Street Furniture' part of the Guidance recommends that bollards should be placed a minimum of 450 millimetres from the kerbside.

37. When visiting the Entrance on 22 December 2009 I measured the pavement outside Mrs C's property at 1400 millimetres.

*(b) Conclusion*

38. I have been presented with insufficient evidence to determine the extent of any damage to Mrs C's property, or to link such damage to the close proximity of HGVs to her home. The photographs that she submitted with her complaint to the Ombudsman (referred to in paragraph 8 of this report) show that vehicles can mount the pavement, and I consider that, even if no damage is caused by this, the situation is unpleasant for Mr and Mrs C and potentially hazardous for pedestrians.

39. I am satisfied that the Council did not dismiss Mrs C's request for bollards and that reasonable efforts were made to consider the feasibility of meeting her request. Regardless of any offers that may have been made to Mrs C, either at the time of proposing amendments to the Peebles Traffic Regulation Order, or subsequently, I consider that the introduction of street furniture at the kerbside outside her property would have gone against the Guidance. A minimum space of 450 millimetres would be required between the bollard and the kerbside, leaving less than 950 millimetres pavement space once the width of the bollard itself is factored in. This would not satisfy the absolute minimum requirement of 1000 millimetres pavement width.

40. The 1000 millimetres minimum width requirement should only apply where there is an obstacle on the pavement. I viewed no such obstacles when I visited the site and note that the pavement is narrower than the recommended minimum width for street furniture without obstruction (1500 millimetres). Whilst I acknowledge that there is some dispute between Mrs C and the Council as to whether bollards were offered hard up against her garden wall, I consider a decision to refuse street furniture on such a narrow pavement, and, therefore, the Council's ultimate position, to be in accordance with the Guidance. Accordingly, I do not uphold this complaint.

*(b) Recommendations*

41. I have no recommendations to make.

**Explanation of abbreviations used**

Mrs C	The complainant
Mr C	Mrs C's husband
X Street	Mr and Mrs C's Street
The Business	A commercial organisation operating in X Street, Peebles
HGV	Heavy goods vehicle
The Council	Scottish Borders Council
The Entrance	The X Street entrance to the Business's premises
Director 1	The Council's Director of Roads and Transportation
Director 2	The Council's Director of Technical Services
The Councillor	Mrs C's local councillor
The Guidance	The Council's Technical Guidance: Street Furniture; and the Department for Transport: Inclusive mobility guidance

**List of legislation and policies considered**

Scottish Borders Council Technical Guidance: Street Furniture

The Department for Transport: Inclusive mobility guidance