

Case 201001398: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Roads and Transport; parking

Overview

The complainant (Ms C) complained about The City of Edinburgh Council (the Council)'s decision to refuse her application for a disabled parking bay outside her home.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to fulfil their statutory duties with regard to parking provision for disabled residents (*upheld*).

Redress and recommendations

	<i>Completion date</i>
The Ombudsman recommends that the Council:	
(i) review their policy for considering applications for disabled parking spaces to take into account the individual circumstances of residents within the CPZ; and	30 October 2011
(ii) reconsider Ms C's application for a disabled parking bay on X Street, taking account of her special circumstances.	30 October 2011

Main Investigation Report

Introduction

1. Ms C lives on a street close to the centre of Edinburgh (X Street). Her son (Master A) is autistic and Ms C has a blue badge for parking (the Blue Badge Scheme is a programme for people with disabilities who find it difficult to get around without using a car). Ms C applied to The City of Edinburgh Council (the Council) for a disabled parking bay outside her property. The Council refused her application due to X Street's location within the city's Controlled Parking Zone (CPZ).

2. The Council explained to Ms C that no applications would be considered within the CPZ. They noted, however, that Blue Badge holders can park in any space, including those reserved for permit holders, as well as on single and double yellow lines (except where loading restrictions apply).

3. Ms C did not consider the Council's position to be in line with national legislation and, dissatisfied with the response from the Council, she brought her complaint to the Ombudsman in July 2010.

4. The complaint from Ms C which I have investigated is that the Council failed to fulfil their statutory duties with regard to parking provision for disabled residents.

Investigation

5. In order to investigate this complaint, my complaints reviewer reviewed all of the correspondence between Ms C and the Council. He also reviewed the relevant legislation, and sought comments from the Council and the Scottish Government as to the Council's policy regarding parking within the CPZ.

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

Legislation

7. In October 2009 the Disabled Persons' Parking Places (Scotland) Act 2009 (the Act) came into force. The Act required local authorities to review their existing disabled parking spaces and required Traffic Regulation Orders to be issued for all existing and new disabled spaces. New powers were introduced

allowing authorities to prosecute individuals parking in disabled bays without displaying a blue badge. Section 5 of the Act is relevant to this complaint and states:

'5 (1) A qualifying person may request a local authority to make a disabled street parking order in respect of a street parking place –

- (a) which is in the authority's area, and
- (b) from which there is convenient access to the person's address.

(2) If it is satisfied that the person making a request under subsection (1) is a qualifying person, the authority must –

- (a) decide whether it is possible to identify a suitable street parking place in its area from which there is convenient access to the person's address, and
- (b) if it decides that that is possible, identify such a parking place.

(4) Subsection (5) applies if –

...

- (b) the authority's decision under subsection (2) is that it is not possible to identify a suitable street parking place in its area from which there is convenient access to the person's address

(5) The authority must give the person who made the request under subsection (1) its reasons.'

8. The Act states that disabled persons' parking places can be used by any vehicle displaying a blue badge. Accordingly, applicants who secure a disabled space close to their home do not have exclusive use of that space.

Complaint: The Council failed to fulfil their statutory duties with regard to parking provision for disabled residents

9. Ms C wrote to the Council on 13 April 2010. She explained that she had received a parking ticket around 01:00 one morning when her car was parked on a double yellow line on X Street. She said that she had had to park there due to the difficulties getting her disabled son from the car into her home and the lack of any available parking spaces. Ms C noted that there were very few, if any, disabled parking spaces on X Street and asked that one be provided outside her property.

10. The Council's Director of City Development responded to Ms C's letter on 4 May 2010. They noted that, although the Blue Badge scheme offers badge holders a number of concessions, it does not permit parking at a carriageway where a loading prohibition is in operation. Ms C had parked in such a place and the Council were satisfied that the correct signage and road markings were in place. With regard to Ms C's request for a disabled parking place, the Director replied:

'I am sorry that I cannot agree to your request for a disabled bay outside your home because of [X Street]'s location within the controlled parking zone. However, your blue badge and residents permit allow you to park in any available bay or on any single or double yellow line (without loading prohibition).'

11. Ms C responded to the Council's letter on 24 May 2010. She acknowledged the Council's position that no disabled spaces would be considered on X Street due to its location within the CPZ. She noted, however, that disabled parking bays were provided on other streets within the CPZ that had similar parking restrictions to X Street. She said that she found the reasons given by the Council for not approving a disabled space on X Street to be vague and asked that they provided some further explanation. The Council explained that the majority of existing disabled spaces within the CPZ were official disabled bays, situated near local amenities and shopping areas. No new disabled parking spaces had been approved within the CPZ. However, the Council were continuing to provide disabled parking spaces outside the CPZ 'in order to provide Blue Badge holders with a degree of priority over other road users in uncontrolled streets'. The Council further explained that it was their policy not to introduce further disabled parking spaces in otherwise completely controlled areas. They considered that the exemptions that applied to Blue Badge holders provided 'considerable additional opportunities to park, free of charge, right across the CPZ.' The Council noted that Ms C's Blue Badge allowed her to park in any available pay and display, residents or shared use bay in the CPZ. They acknowledged, however, that there was no guarantee that a space would be available 24 hours per day.

12. In September 2009 the Council produced a report on the Act and its application for consideration by their Transport, Infrastructure and Environment Committee (the Committee). My complaints reviewer was provided with a copy of the report. Section 3.21 of the report stated:

'Presently, disabled Blue Badge holders residing within the CPZ are issued with an exempt residential permit. This scheme has worked well to date and it is recommended that this arrangement is retained in preference to the installation of individual disabled on-street parking places within the CPZ'.

13. At the time of Ms C's complaint, the Council provided information about the Act on their website. No information was given regarding applications for disabled parking spaces within the CPZ, however, with regard to areas outwith the CPZ, the Council stated:

'All new applications for disabled persons' parking places will be assessed by Services for Communities and where an advisory disabled persons' parking place is installed a TRO will then need to be duly processed. Please note that these places will not be enforceable until the TRO process is completed'.

14. During the course of his investigation, my complaints reviewer obtained further information from the Council. He noted the information on their website and asked whether Ms C's application for a disabled parking space was considered by the Services for Communities team. The Council confirmed their policy that no disabled parking spaces are considered when the resident making the request resides within the CPZ and said that Services for Communities were bound by this policy. The Council also said, however, that in Ms C's case, they had decided under Section 5(2) of the Act that it was not possible to identify a suitable street parking place within the CPZ for a disabled parking space.

15. My complaints reviewer also sought the opinion of Transport Scotland, the Scottish Government's transport agency. They explained that the Roads (Scotland) Act 1984 places the statutory responsibility for roads, including parking issues, with local authorities. Transport Scotland considered that, as long as the Council act lawfully, it is a matter for them to manage their day to day business.

Conclusion

16. I acknowledge the Council's position that Blue Badge holders are issued with exempt residential permits and are, therefore, able to park free of charge in any available pay and display, residents' or shared use bay in the CPZ, as well as on double yellow lines under certain circumstances. However, I consider

that disabled drivers may be disadvantaged when compared to their counterparts living outside of the CPZ. The Council will consider providing disabled parking spaces outside of the CPZ. Whilst such a space can be used by any disabled driver, there will be a limited number of disabled drivers in the area 'competing' for that space. There is, therefore, an advantage to having a disabled parking space. Within the CPZ, drivers can park in any marked space, however, they 'compete' for each space with every other driver in the area, reducing the chances of parking in a particular space. Whilst the driver could park elsewhere, if mobility and access is an issue, as is likely to be the case if a Blue Badge has been approved, then parking away from the immediate vicinity of their home can present a significant problem for disabled drivers. Such competition for spaces within the CPZ was the cause of Ms C's parking ticket which led to her request for a disabled parking bay in X Street.

17. As Transport Scotland noted the Council ultimately has discretion as to how they approach the consideration of applications for disabled parking spaces. Section 5(2) of the Act requires local authorities to consider whether there is a suitable location for a disabled parking space convenient to the applicant's home. The Council's policy regarding disabled parking within the CPZ indicates that they have made a 'catch-all' decision that there are no suitable locations to provide disabled parking spaces for any property within that area of the city. The Act refers to the circumstances of individual applicants, however, the Council's policy does not allow for applications to be considered on a case-by-case basis. Whilst there may be legitimate reasons for the Council to presume against the provision of disabled bays within the CPZ, they make no provision for potentially exceptional cases in which the applicant may have a specific, severe, need for access immediately outside, or very close to, their property. I consider that the Council have fettered their discretion by not taking individual circumstances into account.

18. With all of the above in mind, I uphold this complaint.

Recommendations

19. I recommend that the Council:	<i>Completion date</i>
(i) review their policy for considering applications for disabled parking spaces to take into account the individual circumstances of residents within the CPZ; and	30 October 2011

(ii) reconsider Ms C's application for a disabled parking bay on X Street, taking account of her specific circumstances.

30 October 2011

20. The Ombudsman asks that the Council notify him when the recommendations have been implemented.

Explanation of abbreviations used

Ms C	The complainant
X Street	A street close to the centre of Edinburgh
Master A	The complainant's son
The Council	The City of Edinburgh Council
CPZ	Edinburgh's Controlled Parking Zone
The Act	The Disabled Persons' Parking Places (Scotland) Act 2009
The Committee	The Council's Transport, Infrastructure and Environment Committee

List of legislation and policies considered

The Disabled Persons' Parking Places (Scotland) Act 2009

The Roads (Scotland) Act 1984

The Disability Discrimination Act 2005