

Report

on an investigation into
complaint no 12 005 870 against
Cornwall Council

19 September 2013

Investigation into complaint no 12005870 against Cornwall Council

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying Mr B or other individuals. The names used in this report are therefore not the real names.

Key to names used

- Mr B - Complainant
- Mr and Mrs C - Complainants in complaint reference 11 016 593

Report summary

Planning and development

Mr B owns a site from which he operates a business. The Council granted planning permission for an application to build a new office block but failed to consult the Ramblers Association or consider a public footpath which ran across the site. It also failed to inform Mr B of the need to consider the footpath. The presence of the footpath was identified shortly after planning permission was granted and Mr B was informed of the need to seek a footpath diversion order. However, the Council did not advise him of the length of time that process could take. It also failed to properly advertise the first footpath diversion order, which meant a delay while the correct process was followed. The Council also delayed in recognising and advising Mr B of the correct line of the footpath, and that it was obstructed by the building rather than the parking area. The Council also advised Mr B that he could start work on the development while the diversion order application was under consideration. As the diversion order process took almost two years to conclude Mr B had to put building works on hold. As a result he incurred additional building costs and fees for advice.

Finding

Maladministration causing injustice, remedy agreed.

Recommended remedy

The Ombudsman has recommended that the Council pay Mr B 50% of the costs he has substantiated as being incurred as a result of the failures identified in this report. That equates to £21,323.

The Council has agreed to the Ombudsman's recommendations but the report has been issued as a matter of public interest.

Introduction

1. Mr B complains that the Council, in dealing with his planning application, failed to properly consider how it would impact on a footpath across the site. In particular, he is concerned that the Council failed to take account of the existence of the public footpath and right of way when it granted permission. He is also concerned that the Council failed to share with him the Ombudsman's findings of maladministration in relation to how the footpath was considered when his planning application was processed, following a complaint from neighbouring residents. In addition, he is concerned that the Council advised him to submit a diversion order application when it was aware that the footpath only went over the parking area and subsequently based its view on the position of the footpath on flawed paperwork. The Council then delayed the diversion order process by failing to properly consult on the first application.

Legal and administrative background

2. Article 8 of the Town and Country Planning (General Development Procedure) Order 1995 (now revoked and replaced by article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2010) states that if an application affects a public right of way it must be advertised on site and in a local paper.
3. Section 257 of the Town and Country Planning Act 1990 (TCPA) provides for a council to issue an order to authorise the stopping up or diversion of a footpath in order to allow development to take place. An order made under section 257 of the TCPA shall not take effect if objections are received unless confirmed by the Secretary of State.
4. The Rights of Way Review Committee is a non statutory committee which reviews matters relating to public rights of way in England and Wales. It recommends a pre-order consultation of any interested parties over such matters as the new route, its surface and conditions, with a view to forestalling objections at the formal stage of the process.
5. The Council's procedures delegate the determination of applications for public path orders to the Director for Environment, Planning and Economy in consultation with the Chairman and Vice-Chairman of the Modification Orders Panel. In those circumstances where the Chairman or Vice-Chairman, having taken into consideration the views of the local Member(s), disagree with the proposed decision of the delegated officer or if the delegated officer determines that the decision should be made by Members the matter shall be referred to the Modification Orders Panel.

Investigation

6. Mr B owns a site which had originally been given planning permission in 1998 for conversion of a building to a craft centre. A condition imposed on the permission required a public footpath to be provided to provide access to the craft centre. The 1998 consent was implemented and Mr B subsequently purchased the land. In November 2007 he was granted planning permission for an entrance extension and a single-storey stable block. The single storey stable block was to replace an existing building. An informative note stated that a public footpath ran through the site and before development could commence a diversion order needed to be obtained.
7. The entrance extension was built but the stable block was not constructed. On 8 March 2010, and before the expiry of the 2007 planning consent, a planning application was made for a two storey office building on the site of the intended stable block. The Council states that Mr B made no enquiries as to the precise location of the public footpath prior to the submission of the planning application. The planning application form asked whether there were any new public rights of way to be provided within or adjacent to the site and whether the proposals required any diversions/extinguishment and/or creation of rights of way. Mr B ticked 'no' to both questions. He states he ticked that box because he genuinely believed that the development would not affect the public footpath. He says that he took that view because he has worked on the site for 12 years, lived in the area for 15 years before that and has regularly walked his dogs on the footpath in question. He was therefore satisfied that the route of the footpath would not be obstructed by the development. In fact, he says that he had deliberately instructed his architects to place the new building on the site of the old barn (which the new building would replace) so as to minimise any impact on the area in general. He also states that he and his architects had checked all available maps showing footpath routes. He says that while he was aware that the Council held maps showing several possible locations for the footpath he was satisfied that none of them passed through the footprint either of the old barn or the new building.
8. The Council advertised the development in press notices on 25 March. The advertisements stated that the development affected a footpath/public right of way. Consultations were also issued, including to the Council's environment service. The environment service responded by email on 28 April, attaching a plan showing the position of the footpath. The response stated the environment service's view that the footpath would be affected by the proposed parking area for the new office accommodation. It went on to say that the applicant (Mr B) would need to apply for a diversion of the public right of way before any planning permission could be implemented. It is now clear that this email was not identified prior to planning permission being granted on 30 April.

9. The environment service email was discovered on 25 May. Mr B's architects were informed of the email immediately and advised of the need to apply to divert the footpath. A footpath diversion order application was submitted by Mr B on 13 July. Mr B's architects signed the application, which included the agreement not to undertake any works on the line of or affecting any existing public right of way within the development site prior to a confirmed order to divert or extinguish the public right of way.
10. On 20 August Mr B telephoned the Council to query whether he could start work on his development. An officer from the Council's environment department advised him that he could.
11. Mr B commenced work on the development in September 2010. That prompted complaints to the Council by local residents concerned about obstruction of the footpath. An enforcement officer visited the site and instructed the builder to clear some items from the footpath and put in place safety fencing to ensure that the path remained clear. The enforcement officer emailed Mr B's architect on 28 September confirming that the proposed parking area would affect the footpath. The work requested by the enforcement officer was undertaken and Mr B's architects emailed the Council on 28 September to advise that no work would be carried out or any obstruction placed in the parking area until the order had been made.
12. Mr B's architect emailed the Council on 5 October to clarify whether completing the development but not laying out the parking areas would mean that the development was not substantially complete. That query was made because the architect was aware that the diversion order could not be confirmed if the development was substantially complete. An enforcement officer visited the site on 18 October when the architect was apparently advised that the works undertaken to date did not mean that the development was substantially complete. The footpath route was also marked out on the ground during that visit. I understand Mr B ceased building works at that point.
13. On 3 November 2010 the Council published a proposed diversion order. The draft order was subsequently withdrawn following legal advice that a map was incorrect and as statutory and other consultations had not taken place.
14. On 7 December the Countryside Access Team Leader met with Mr B's architect. He advised that he had undertaken further inspection of the maps for the footpath and reached the conclusion that the definitive path was not as had been marked on the ground. He stated that he believed the footpath passed through the building being constructed and had passed through the previous building on the site which the new building was replacing.

15. In April 2011 the Chair and Vice-Chair of the Modification Order Panel gave approval for withdrawal of the November 2010 order and for the making of a new order. The new diversion order was made and advertised in May 2011. 13 objections were received, which meant that the matter had to be referred to the Planning Inspectorate (see paragraph 3).
16. Mr B offered to dedicate two rights of way in August 2011 if the objectors would agree to withdraw their objections. A formal offer of dedication was made by him in September 2011. The Council wrote to those objectors who had not withdrawn their objections to make them aware of the offer. As no further objections were withdrawn the matter was referred to the Planning Inspectorate in October 2011. A public inquiry took place in May 2012. The Planning Inspectorate confirmed the order on 21 June 2012 with minor modifications.

Complaint reference 11 016 593

17. Mr and Mrs C submitted a complaint to me about how Mr B's planning application had been considered in December 2011. One of the Ombudsman's Investigators considered that complaint. On 5 April 2012 he reached the following conclusions:
 - Arguably Mr B's application should have been withdrawn and amended as it was technically defective as it failed to refer to the right of way.
 - Failure to seek the views of the Ramblers Association was in breach of the Council's procedure and was further fault. He concluded that it was likely that if that step had been taken the consultation response would have highlighted the need to take account of the footpath.
 - The Council failed to have regard to the existence of the public right of way as a material planning consideration. He highlighted that a response referring to the footpath and the need for a diversion order was mislaid and not considered by the case officer. He also noted that the case officer failed to identify the footpath during her visit and although the footpath was identified as a constraint in the report it was not taken into account in the appraisal of the development.
 - The decision notice failed to refer to the need for a formal diversion of the public right of way.
 - On the balance of probability he considered that the Council would likely have granted planning permission for the development to take place either in the location originally specified, subject to a condition requiring diversion of the footpath, or on another part of the site.

The complaint to the Council

18. Mr B submitted a complaint to the Council on 17 April 2012. He alleged that:
- the Council should have informed him of my finding of maladministration in relation to the complaint submitted by Mr and Mrs C;
 - the Council failed to consider how his proposed development would impact on the right of way;
 - the Council failed to follow its guidance in relation to discussing the proposal for development and its impact on the right-of-way with Mr B during pre-application meetings. He stated that if it had done so he, Mr B, could have positioned the new building well away from the public right of way and therefore the diversion order process could have been avoided, which would have saved him in excess of £56,000 in costs;
 - the Council's view that the right of way ran under the building was only a matter of opinion and was not based on fact;
 - that as his application had been advertised as affecting the footpath and planning consent was granted anyway without any further reference to footpath issues he could reasonably have concluded that the Council had considered the footpath issue and concluded that no further action was needed; and
 - that the Council was at fault for making the first diversion order without carrying out the necessary consultations.
19. The Council did not uphold any of Mr B's complaints. It stated that although it was unfortunate that the application form had not been completed correctly and the email from the environment service had been mislaid, Mr B's architect had been informed before building works commenced that they would need to either divert the footpath or submit an amended application. It therefore stated that Mr B had an opportunity to reposition the building away from the public right of way before building works were commenced. Mr B denies that he was given such a choice.
20. Mr B submitted a further complaint on 31 May 2012. He stated that as the Ombudsman had already concluded that the Council had erred in processing his planning application then the same was also true of the complaint he had submitted. He reiterated that the Council had failed to follow the guidelines produced by the Rights of Way Review Committee (see paragraph 4).
21. The Council did not uphold any of Mr B's complaints. It concluded that the guidelines quoted by Mr B had little weight or status and are only intended to be a best practice guide. It also stated that there had been no opportunity to discuss

any rights of way issues with Mr B during pre-application discussions as there had been no pre-application discussions. The Council reiterated its view that the case officer was only aware of the right of way problem after planning permission had been granted and that as Mr B was certain at application stage that the footpath was not affected the Council could not see how the matter could have been resolved at an earlier date.

Mr B's complaint to me

22. Mr B submitted a complaint to me on 31 July 2012. He referred to my findings in complaint reference 11 016 593, where I had criticised the Council for the way in which it had processed Mr B's planning application, specifically in relation to how the rights of way issue was considered (see paragraph 17). He alleged that as a direct result of the Council's failure to properly consider the footpath issue he had experienced over two years of delay to the completion of his development due to the need to follow the diversion order process, which resulted in an inquiry by the Planning Inspectorate. He highlighted the fact that the Council had advertised the development as affecting a public footpath but had then failed to do anything to check whether the footpath was affected by the development. He stated that his understanding at the time of completing the application form was that the footpath would not be affected by the development, particularly given that he intended to erect the new building on the same footprint as an existing barn which had been there for in excess of 40 years. He advised though that if the Council had at any stage indicated that the footpath would be impeded by the new building he would have had ample time to revise the plan and position the new building well away from any footpath, which would have avoided the delay and an additional £56,000 in costs. He also advised that a Council officer had given him permission to go ahead with the building works in August 2010, at which time the Council had expressed the view that the footpath went through the parking area, rather than underneath the proposed building. He states that this position was not changed until December 2010, by which time he had carried out a significant amount of building works which then had to be put on hold. He also alleged that the Council was at fault for failing to properly consult on the initial diversion order, which further delayed the process as the original order had to be withdrawn.
23. Mr B stated that as a result of the failures of the Council he has incurred £56,646.91 additional costs. That includes costs to protect the unfinished building, additional mortgage interest paid in 2010, consultancy fees and solicitor fees. In addition, he stated that the delay prevented him growing the business which meant a loss of rental income of £16,640, an inability to recruit staff and he and his staff spending hundreds of hours dealing with the issue. In addition, he stated that he and his family had been caused significant stress.

The Council's response

24. In its response the Council conceded that it was at fault in those areas where I had criticised it in relation to complaint reference 11 016 593 regarding the way in which it had handled the footpath issue when processing Mr B's planning application. It stated though that any injustice to Mr B related only to the period from 30 April 2010, when planning permission was granted to 25 May 2010, when Mr B was made aware of the fact that the development would affect the footpath and a diversion order was therefore necessary. It stated that in any case if the case officer had been aware of the footpath before making the decision on the planning application it would only have resulted in the insertion of an informative on the decision notice requiring that the footpath be diverted prior to the commencement of development. It states that exactly the same procedures as those which took place would then have followed.
25. The Council stated that the proposed remedy of in excess of £56,000 did not arise from the delay in informing Mr B of the fact that the footpath was affected by his development but rather as a result of the need to go through the process to divert the footpath. It states that this process would have been necessary regardless of any delay. It also pointed out that Mr B failed to submit any claim for costs against the Council arising from the footpath diversion during the inquiry process. The Council noted that Mr B had indicated that if he had been informed sooner that the building works would obstruct the footpath he would have moved the building to another part of the site rather than going through the diversion order process. It states that this option was proposed to Mr B in May 2010 and yet Mr B chose not to amend the location of the building at that point. It also points out that Mr B made no enquiries as to the position of the footpath prior to the submission of the planning application. It states that if he had done so he could have identified that the 1954 Public Path diversion order showed the path to pass through the footprint of the proposed building.

Conclusions

26. I have already concluded on a previous investigation (see paragraph 17) that the Council was at fault for the way in which it handled Mr B's planning application. I concluded that the Council failed to identify that the application was technically defective as Mr B had not referred to the public right of way crossing the site. I concluded that arguably the application should have been withdrawn and amended as it did not meet the Council's validation requirements.
27. The Council also failed to seek the views of the Ramblers Association before reaching a decision on the planning application. That was a breach of the Council's procedures, which requires consultation with the Ramblers Association when a public right of way is affected by proposed development. That is further fault. Failure to consult with the Ramblers Association at the outset compounded the lack of regard for the right of way. I consider that if this step had been taken it

is likely that the consultation response would have highlighted the need to take account of the footpath.

28. The Council then failed to have regard to the existence of the public right of way as a material planning consideration when it decided to grant planning permission. I am particularly concerned to note that a consultation response which highlighted the footpath and need for a diversion order was mislaid, albeit the consultation response incorrectly stated that the parking area would obstruct the footpath. Consequently it was not considered by the case officer. The case officer also failed to identify the footpath during her visit. Although the report for the planning application stated that the footpath was a constraint there is no evidence that it was taken into account in the appraisal of the development. That is maladministration. The failure to refer to the need for a formal diversion of the public right of way in the decision notice was further fault.
29. I am aware that Mr B believes the Council should have shared with him my findings in relation to the earlier complaint submitted by Mr and Mrs C. My investigations are confidential and I did not recommend that the planning applicant be informed of my findings in relation to Mr and Mrs C's complaint. Nor would I usually make any such recommendation. I therefore do not consider the failure to inform Mr B of the decision on the other complaint to be evidence of fault. However, I consider that the Council should have considered sharing with him my findings in relation to how the planning application was processed given his ongoing contact with the Council expressing concern about its handling of the right of way issue. While the Council states it did consider that and reject it on the grounds that it would not be constructive I have seen no evidence of that.
30. Mr B is also concerned that the Council advised him to submit a diversion order application when he says it was aware that the footpath only went over the parking area. He does not believe that advice was appropriate as he says the plans could simply have been redrawn to amend the position of the parking bays. While I understand Mr B's point, I note that a telephone message was left for Mr B's representative on 25 May 2010, advising that Mr B needed to either submit a diversion order application or a revised planning application. I am aware that Mr B disputes that this telephone message was left. However, the detail of that telephone message was also confirmed in an email to Mr and Mrs C in January 2011. It therefore does not seem to me that the note of the call was added after the fact, as Mr B has claimed. In any event, I would have thought that Mr B's adviser would have informed him of the possibility of submitting a revised planning application to avoid any need to divert the right of way, had he considered that to be an option. I have seen no evidence to suggest that either Mr B or his adviser made any enquiry about submitting a revised application. Nor have I seen any evidence to suggest that they discussed with the Council any

option to amend the layout of the parking area to prevent the need for a diversion order. As I consider, on the balance of probabilities, that the 25 May 2010 telephone call was made I am satisfied that Mr B was informed of the possibility of submitting a revised planning application. I therefore do not consider that there are any grounds on which I could criticise the Council here.

31. I am concerned though that there was a delay in the Council identifying that the footpath would be obstructed by the building, rather than the parking area. I have seen no evidence to suggest that the Council reached that conclusion until December 2010. The Council has stated that the 1954 diversion order shows a clear route for the footpath which should have enabled Mr B to identify that the proposed building would obstruct it. If the map is as clear as the Council says it is I am surprised that it took until December 2010 for the Council to identify that the building would obstruct the footpath. Up until that point the evidence I have seen satisfies me that on every occasion the footpath was discussed with Mr B the Council advised him that it was the parking area which would obstruct it. If the Council was unable to identify the proper route of the footpath until December 2010 I see no reason to criticise Mr B for failing to identify the route of the footpath based on the same plans.
32. I am aware that Mr B believes the Council based its view on the location of the footpath on flawed plans. In particular, he has highlighted inconsistencies in the information considered by the Council. As I understand it, he therefore does not believe that the Council's view that the building would obstruct the footpath is accurate. I understand Mr B's concern about the accuracy of the Council's maps, given the confusion over the location of the footpath. However, the Planning Inspectorate has now reached a view on that issue. Its view was that the footpath would be obstructed by the building and therefore needed to be diverted. That is not a view I can comment on. Given that the Planning Inspectorate determined that diversion of the footpath was necessary I do not consider I could criticise the Council for the view it took, other than for the delay in reaching that point.
33. I am concerned about the way in which the Council handled the diversion order process. I note that a delay occurred between November 2010, when the original order was made and advertised, and May 2011 when a revised order was made and advertised. That delay was as a result of the Council failing to follow its procedure in November 2010, which required consultation with the Chair and Vice-Chair of the Modification Order Panel and the Local Member, none of whom had been consulted. The Council's failure to follow its procedures is maladministration.
34. I recognise that Mr B is also concerned about the delay which occurred in order for the public inquiry to take place and for the Planning Inspectorate to issue its decision. However, I cannot hold the Council responsible for those delays, which were outside its control. In reaching that view, I am aware that Mr B takes the

view that the entire diversion order process could have been avoided if the Council had identified that the public footpath would be obstructed by his proposed building when the planning application was submitted. He believes that if this had been made clear to him at the outset he would have had an opportunity to redraw the plans to ensure that the footpath was not obstructed. He says that would have meant that no diversion order process or delay would have occurred. I understand why he would take that view. However, it seems to me that his view has been influenced by the experience of the delay caused by the diversion order process. As I said in paragraph 30 I am satisfied that Mr B was given the opportunity to submit a revised planning application in May 2010 in order to ensure that the parking area did not obstruct the footpath. However, he chose to pursue a diversion order application. I see no reason why the position would have been substantially different had it been the building, rather than the parking area, that was considered to obstruct the footpath. Indeed, it seems to me that redrawing the plans to amend the layout of the parking area would have been an easier proposition than amending the plans to move the building. So, I do conclude, on the balance of probability, that the diversion order process could have been avoided in its entirety had Mr B been given accurate information about the location of the footpath at the outset of the application process.

35. I am surprised that the Council encouraged Mr B to commence building works on site in August 2010. At that point the Council incorrectly believed that the footpath would be obstructed by the parking area. However, I have seen no evidence to suggest that Mr B was informed of the likely delay in pursuing a diversion order application and the knock-on effect this would have on the works he could undertake on site. In my view the Council should have been more circumspect about whether it was appropriate for Mr B to commence work on site. I consider that it should have reminded him that any works undertaken were at his own risk and that the diversion order process could take some time, during which the works could not move to substantial completion. Failure to advise Mr B of that is maladministration.

Injustice caused

36. In light of that I have to consider what injustice Mr B has suffered as a result of the Council's failure to process his planning application and diversion order application properly. It is possible Mr B would have chosen to amend the plans for the application had he been informed of the Council's view that the building would obstruct the footpath at the outset. He never had that option as he was not informed of the correct location of the footpath until December 2010, so he is therefore left not knowing whether he could have avoided the costs he incurred in order to protect the building works while the diversion order was processed. In addition, Mr B has a justifiable sense of outrage that the Council encouraged him to commence works on site without providing any guidance about the length of time the diversion order process would take and how this would impact on those

works. He is therefore left feeling that he made the decision to commence building works in good faith, based on the Council's advice, which has subsequently proved to be inadequate. It is also clear that he has incurred significant solicitor and consultancy fees as a result of the delay.

37. In reaching this view of the injustice caused I have taken into account the Council's contention that Mr B could have done more to identify the route of the footpath before submitting his planning application and that it is his failure to do that, rather than any fault on the part of the Council, which is responsible for the costs he incurred. I do not consider that to be a strong argument. It is clear to me that Mr B has a good knowledge of the area having lived in it for a considerable period of time and operated a business from the same site for a number of years. It is also clear that he was aware that there was a footpath passing through the site and his experience was that the footpath walked by locals was not obstructed either by the proposed building or the car park area. As the Council has conceded, it held a number of different maps, showing different routes for the footpath. In addition, the building to be constructed by Mr B was to replace a building which had been in situ for more than 40 years partly on the same footprint as the building proposed in Mr B's application. That building had therefore also been obstructing the footpath for all that time, with no enforcement action by the Council. In those circumstances and as the Council was unable to identify an accurate route for the footpath until December 2010, I cannot see that the outcome for Mr B would have been any different had he made further enquiries about the location of the footpath at the outset. Indeed, it seems to me that if he had approached the Council before submitting his planning application it is likely he would have received incorrect information in any case given that different officers repeatedly advised him prior to December 2010 that the footpath passed through the parking area, rather than the footprint of the proposed building. I therefore do not conclude the actions of Mr B were solely responsible for the subsequent costs he incurred.
38. The Council has put forward the view that the only injustice to Mr B relates to the period 30 April 2010 to 25 May 2010 as it says that the agent for Mr B's planning application was informed of the error in relation to the footpath as soon as the case officer was made aware of the situation. As this was before Mr B commenced building works the Council states that it was not responsible for any of the costs incurred. I do not consider that argument to be persuasive. Nor do I consider the Council's argument that Mr B undertook the works at his own risk prior to the diversion order being confirmed to be persuasive. In normal circumstances those arguments would hold considerable weight given that the diversion order application requires the applicant to sign to state that no works will be undertaken which affect an existing public right of way and Mr B was aware that a right of way was affected in May 2010. In this case though, the

documentary evidence confirms that a Council officer advised Mr B on 20 August 2010 that there was no operational problem with commencing building works. I therefore consider that the Council encouraged Mr B to commence works on site. It was the need for those works to be put on hold to enable the diversion order process to be completed, which took almost two years, which resulted in Mr B incurring significant costs. I consider it unlikely that Mr B would have commenced those works without the encouragement of the Council. I consider there is a possibility that Mr B could have avoided those delays and consequent costs if the Council had dealt with the footpath issue properly or if it had not encouraged him to commence the building works without warning him of the possible length of the diversion order process. I therefore consider that the Council should pay a contribution to the additional costs he incurred, as outlined in paragraph 36.

39. I recognise that Mr B believes the Council to be responsible for all of the costs he incurred. I do not recommend that the Council repay all of the costs incurred by Mr B. That is because I am satisfied that those costs were incurred as a result of the need to put building works on hold pending the outcome of the diversion order process. Only if I were satisfied that the diversion order process could have been avoided in its entirety had the Council handled the matter properly would I be able to recommend that all of Mr B's costs be repaid. As I said in paragraphs 30 and 34 I could not reach that conclusion. However, I consider there is a possibility that the costs could have been avoided if the Council had given Mr B accurate information at various stages. That may have resulted in him making a different decision about how to proceed. In reaching a view on remedy I have also taken into account the fact that Mr B had his own advisers representing him. I consider that those advisers should also have identified and discussed with Mr B the possibility of redrawing the plans to avoid the footpath, rather than pursuing a diversion order application. I also consider that his advisers should have given him advice about the likely length of the diversion order process given the level of local opposition in order for him to determine whether commencing building works was appropriate before the process was completed. I consider failure to give that advice contributed to the situation Mr B found himself in. I therefore consider that the Council should only be required to pay 50% of the costs incurred by Mr B.

Recommendations

40. For the reasons explained above I consider the Council should pay Mr B 50% of the costs he has substantiated as being incurred as a result of the failures identified in this report. That equates to £21,323 as Mr B has subsequently conceded that the mortgage costs of £14,000 would have been incurred in any case. I have therefore deducted that figure from the total costs incurred, referred to in paragraph 23.

41. I do not recommend that the Council make any payment in respect of lost rental income as Mr B has requested. I consider it to be my role to seek a remedy based on the documented additional costs Mr B incurred as a result of fault on the part of the Council. If Mr B wishes to pursue business losses that is a matter he will need to consider taking legal action on.
42. I do not consider it necessary for Mr B to provide to the Council documentary evidence to certify the extent to which he has claimed or will be claiming tax or any other relief in relation to the costs the Council is to pay. I have verified Mr B's additional financial costs and the Council has accepted my proposal for remedy.
43. I am pleased the Council has agreed to my recommendations. I have however decided to issue the report as a matter of public interest.



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