

The Ombudsman's final decision

Summary: Mr C complained the Council allowed a mosque near his home that had not applied for planning permission. We uphold the complaint, finding the Council did not consider sufficiently legal argument presented by Mr C. This caused injustice as the Council's position created uncertainty about whether it could correctly say the mosque did not need planning permission. In response to this finding the Council has reconsidered and now agrees the mosque needs planning permission.

The complaint

1. I have called the complainant 'Mr C'. He complained on his own behalf and that of other residents, living close to a mosque located in the Council's district. He complained the Council did not require planning permission for the mosque. The Council took this position as the mosque uses a building formerly occupied by a GP surgery which falls under the same 'use class' as a place of worship. Mr C said this overlooked evidence and legal opinion provided by residents suggesting the building either had a mixed use or a different use before becoming a mosque. They say this meant the mosque needed planning permission for a change of use of the building.
2. Mr C said the Council's position meant that it could not consider the impact the mosque has on residents. Mr C says the mosque affects the amenity of residents because of noise associated with its use (especially at night) and its impact on local traffic conditions and parking.

The Ombudsman's role and powers

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

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5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. Before issuing this decision statement I considered:
 - Mr C's written complaint to the Ombudsman and supporting information he provided, including that provided in a telephone conversation.
 - Information provided by the Council in reply to our written enquiries.
 - Comments made by Mr C and the Council in response to a draft decision statement where I set out my thinking about the complaint.

What I found

The key facts

7. The mosque at the centre of this complaint uses a building which in 1988 received planning permission for "*a change of dwelling to a Doctors Surgery with a flat over*".
8. A GP used the ground floor of the building for a surgery until around 2011 or 2012. The Council has provided me records indicating that until 2011 it charged non-domestic rates on the whole building.
9. From 2011 until 2015 the Council noted individuals or businesses liable for council tax for the flat above. Between 2013 and 2015 the Council registered a third-party trading as a dental laboratory liable for council tax at that address. The Council provides no records suggesting it charged council tax for any separate occupancy of the 'flat above' the surgery at any other time.
10. The Council says the flat above the surgery had no separate entrance from the surgery and no separate amenity or car-parking space. It described the building's arrangement as similar to that of a flat located above a public house.
11. Mr C's statements agree that a dental laboratory traded from the building (he says between 2012 and 2015). In April 2017, he gave the Council (via his Councillor) the name of the business, the name of the owner of the business and his contact details. Mr C told me that when the dental laboratory traded from the building it occupied both floors. Through ground floor windows residents could see work benches, Bunsen burners and other laboratory equipment.
12. Mr C states before that residents have recollections of an individual who lived in the flat above the surgery. They do not believe that individual had any connection to the surgery as residents knew the GP and nurse/receptionist who worked there.
13. Mr C and other residents noted the building renovations taking place in 2016 and learnt of plans to convert it to a mosque. The Council's records suggest the trustees of the mosque took over responsibility for the building around March 2016. Mr C says that some residents contacted the Council to ask if the mosque needed planning permission and received advice that it would. The Council has no records of such contacts. Mr C has provided an email confirming the Council implied the mosque may need planning permission for a change of use once (or if) it opened. But I note this was not definite in saying the mosque would need such permission.

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14. There is also a brief undated note of the Council giving advice to the trustees of the mosque or their agents (it does not say which). This note says the Council gave advice, *“the proposed use would fall within the same use class as existing doctor’s surgery thus planning permission not required for the use”*. I note that this file note does not suggest the Council knew of the building’s use (or part-use) as a dental laboratory before the mosque took over occupancy.

The dispute around whether the mosque needs planning permission

15. Mr C contacted his local Councillor in April 2017 on behalf of residents raising concerns about the impact of the mosque on their amenity (see summary in paragraph 2). In response, the Council gave advice that it considered the mosque did not need planning permission. It said that under the Use Classes Order both the building’s use as a GP surgery and its use as a place of worship fell under use class ‘D1’. An occupier needs no planning permission to use a building whose previous use falls within the same ‘use class’.
16. In July 2017 Mr C obtained a legal opinion from a solicitor. They disputed the Council’s position arguing:
- The 1988 planning permission did not restrict occupancy of the flat to anyone working at the surgery. This suggested the flat was not ‘ancillary’ to the use of the ground floor as a surgery. Therefore the 1988 planning permission had created a mixed use of a surgery on the ground floor and a residential unit above. The residential unit fell within use class ‘C1’. In planning law, a change of use had therefore taken place. Because an applicant must get planning permission to change the use of a mixed-use building to a single use. This is even if one of the ‘mixed uses’ is of the same use class as the proposed use.
 - That further, the use of the building as a dental laboratory did not fall within a ‘D1’ class. It was *“likely”* a ‘B1’ use (business/light manufacturing). So any use of the building as a dental laboratory was an unauthorised use. Case law was that *“it was not lawful to revert from an unauthorised B1 use to the previous use as doctor’s surgery and dwelling unless it was pursuant to service of an enforcement notice”*.
17. In August 2017, the Council took its own legal advice on the opinion given to Mr C. Its legal advice disagreed with the opinion. The Council’s legal adviser considered Mr C’s legal advice based on wrong facts. I note here the Council stated the dental laboratory use only took place on the first floor of the property. I also note an internal email which suggests the Council believed Mr C’s solicitor had considered the dental laboratory an authorised use.
18. The Council wrote to Mr C in line with its legal advice saying:
- It considered the whole building was the ‘planning unit’ in this case. The residential flat was therefore *“secondary to the main surgery use”*.
 - The primary use of the building therefore remained a ‘D1’ use throughout.
19. In October 2017 Mr C had a meeting with Council officers to discuss the use of the mosque and the differing positions set out above. He says at this meeting the Council told him a receptionist to the practice had used the flat above the surgery. The Council’s notes of this meeting do not record that statement, but I note they are limited in scope. I note that Mr C sent the Council his notes of the meeting, where he recorded the above which the Council did not dispute.
20. In November 2017 Mr C and residents took further legal advice, this time obtaining a Counsel’s opinion. I summarise that opinion as follows:

- It agreed with Mr C's first legal advice that the facts did not suggest the flat above the surgery was ancillary to the use of the ground floor as a surgery. Counsel said that to use flat as ancillary to the surgery did not need planning permission. He said the building had "*plainly a mixed use*".
 - He provided a lengthy commentary of whether the detailed terms of use class D1 would allow living accommodation as a flat above a surgery for use by someone other than a 'consultant or doctor'. He concluded it would not.
 - He also agreed with the earlier legal advice given to Mr C about the use of the building as a dental laboratory being relevant. He said, "*it is a simple principle of planning law that if a material change of use is made from use X to use Y and back again to use X then planning permission is required for both material changes of use unless the limited exceptions in Section 57 of the Town and Country Planning Act 1990 apply. None of the exceptions in section 57 apply [...]*". Counsel went on to cite case law in support of their advice.
 - The mosque needed planning permission therefore for a change of use of the building. The Council could take planning enforcement action if the mosque did not have this.
21. I have seen no records suggesting the Council reconsidered its position following receipt of this advice. It later provided replies to Mr C's complaints and other correspondence, but only to reinforce the views of its planning officers have not changed. They consider the mosque an authorised use of the building it occupies. It said that it was not appropriate to consider complaints about the planning service position as the complaint challenged officer opinion rather than procedure.
22. In further comments to me the Council said that it did not consider the period of unauthorised use by the dental laboratory affected the pre-existing authorised use class. So the example of a use class changing from 'X' to 'Y' to 'X' did not apply; as it never authorised use 'Y'.

My findings

23. As I explained in paragraph 3 I cannot find fault with the judgments reached by Council officers because a complainant disagrees with their judgment. I can only uphold a complaint if I consider there is procedural fault in how officers have arrived at their judgment.
24. In considering any evidence of such fault in this case, I first considered if the Council had reasonably sought to find out the facts about the history of the building. I considered this matter potentially important as any decision on whether the mosque need apply for planning permission may hinge on having an accurate understanding of the building's past use. The more the Council can find out facts about the historic use of the building, the more likely it is that it will reach a sound judgment on this question.
25. I noted here that Mr C contested key details of the Council's statements about the history of the building. For example, the assertion the dental laboratory occupied only the first floor of the building. Or the assertion the flat above the surgery was only ever occupied by a receptionist. Mr C gave the Council contact details for the previous occupier of the building. Yet there is no suggestion it spoke to him (or tried to speak to him) to find out which parts of the building he used or get more details of the work undertaken by the laboratory. Nor did the Council make enquiries of the mosque trustees to find out the condition of the building on letting. Nor the building owner. Nor had it approached residents for detailed statements

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- to see if they could elaborate on what they know about the use of the flat or the use of the building as a dental laboratory.
26. The only records the Council provided for the history of the building were the lists about non-domestic rates and council tax which contained only limited information. Those lists did not contain information such as where information about the liable occupiers originated from. For example, was it via telephone contact from the occupier or visit by a Council officer. I saw nothing to suggest where the Council obtained information the dental laboratory occupied only the first floor of the building. Nor records of occupancy of the flat above the surgery to suggest a receptionist lived there or anyone else.
 27. So, I consider there was scope for the Council to do more to find out the facts about the history of the building's use. However, given its certainty the mosque benefited from the same use class as the doctor's surgery, I could understand why it considered such enquiries irrelevant.
 28. This led me to consider whether it had properly considered the points made in the legal opinions shared by Mr C. I was concerned that in its communications with Mr C the Council failed to engage with a key plank of the legal argument put forward in the advice he received.
 29. I have summarised above the legal advice received by Mr C and seen by the Council. There are two key arguments advanced the mosque use is unauthorised and so needs planning permission. First, because the 1988 planning permission creating a surgery with flat above did not create a D1 use but a 'mixed use'. Second, that once the surgery became a dental laboratory the building had a different use (the advice suggests 'B1'). In either event the advice argues that a change of use has occurred and so the building needs a new planning application for use as a mosque. I note that both the Mr C's solicitor and Counsel clearly knew the dental laboratory use was unauthorised.
 30. I found the Council had engaged to some degree with the first argument. In reply to my enquiries it also clarified why it considered the building one 'planning unit'. Although I also note the strong opinion expressed by Counsel that the facts in this case pointed to a different conclusion.
 31. But I found little evidence of the Council engaging with the second argument. I note the advice Mr C received describing the Council as "*gravely misinformed*" on the law in not understanding the "*simple principle*" that "*if a material change of use is made from use X to use Y and back again to use X then planning permission is required for both material changes of use*".
 32. Again, in reply to my enquiries, the Council provided more detail about why it disagreed. The key consideration for the Council was that it never authorised the 'Y' use. I looked at the case citations in the legal advice given to Mr C. I did not find them decisive given both cases referred to instances where planning authorities were seeking to enforce against unauthorised use. So, I did not consider the cases directly analogous.
 33. For that reason, I did not find the Council at fault for holding to the view the mosque could benefit from the same use class as the GP surgery. However, I considered the legal advice advanced a clear arguable case why the Council *might* have been wrong to hold to this view.
 34. This led me to consider the process followed by the Council when it received this advice. I do not consider the Council obligated to seek its own legal advice simply

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- because a complainant obtains their own advice. Its own officers will hold professional qualifications and have experience in matters of planning law.
35. But I considered in this case the Council had closed its mind that it may have its position wrong. I found it disappointing there was no evidence of detailed scrutiny of the Counsel opinion provided by Mr C. Especially given the qualifications and expertise of its author.
36. I did not consider at that point the Council could simply fall back on the earlier legal advice it received. I found that advice focused on the concept of the planning unit and so engaged with the argument about whether the use of the flat was ancillary to the surgery use of the building. But it offered no comment on the implication of the unauthorised change of use of the building to a dental laboratory.
37. I found fault therefore in the Council not engaging sufficiently with this key plank of the argument put forward by Mr C in considering the mosque an unauthorised development.
38. This fault caused an injustice to Mr C. I could not say that but for this fault the Council had to come to a different view about whether the mosque needed planning permission. But there was an arguable case it might do so. This is because I considered that if the Council had engaged more with the legal arguments put forward by Mr C, it might have come to a different view. We consider such uncertainty a form of distress.
39. Finally, I noted the Council's decision not to conduct a detailed investigation of Mr C's complaint before referring him to this office. I agree a complaint procedure is not there to overturn professional judgments reached by officers which are properly made. But it can and should consider the procedure followed by officers in reaching their judgments, including scrutinising what account they have taken of legal opinions shared with them.

Agreed action

40. I sent my analysis to the Council and Mr C in a draft decision statement. I recommended action I wanted the Council to take to remedy the complaint, including seeking fresh legal advice.
41. The Council accepted this recommendation and to its credit sought such advice straight away. That has now resulted in the Council reconsidering its position. It now agrees the mosque does need planning permission.
42. Further the Council has agreed that within 20 working days it will write to Mr C to explain how it proposes to progress this matter. For example, if it proposes taking any enforcement action, inviting a retrospective planning application or delaying a decision to make further enquiries into the history of the building.
43. Ideally, I would like the Council to share its further legal advice with Mr C in a spirit of transparency. But I did not make this as a recommendation, recognising the Council's entitlement to legal privilege. I trust when it writes to Mr C it will share as much as it considers appropriate about its changed thinking.

Final decision

44. For reasons set out above I upheld this complaint, finding the Council acted with fault causing injustice to Mr C. The Council has accepted these findings and has taken action and agreed to further action which will provide what I consider is a fair remedy to the complaint. So, I can complete my investigation satisfied with its actions.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mr C complains at the Council's decision that it is not expedient to take planning enforcement action against an unauthorised Mosque close to his home. We find fault in the Council's decision as it did not properly take account of government guidance, its own enforcement policy and other relevant factors when making it. This has caused injustice to Mr C as there is uncertainty if the Council would have made the same decision but for the fault. The Council has accepted these findings and agreed to re-consider its decision. Details of how it will do this are set out at the end of this statement.

The complaint

1. I have called the complainant 'Mr C'. He complains about a decision taken by the Council that it is not expedient to take enforcement action against a Mosque that operates without planning permission close to his home. Ten residents living nearby have written in support of Mr C's complaint.
2. Mr C says because of the Council's decision there are no planning controls over the Mosque. He and other residents say the Mosque has a negative impact on them. In particular, because visitors to the Mosque park on local roads which causes congestion and difficulties for residents parking near their homes. He says residents also experience the negative impact of noise. This can be from visitors arriving and leaving the Mosque and some hear noise from inside the building. Residents say the Mosque often opens at 5:00am and stays open until late in the evening.

The Ombudsman's role and powers

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

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5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. Before issuing this decision statement I considered:
 - Mr C's written complaint to the Ombudsman and any supporting information he provided including the letters of support from other residents.
 - Information provided by the Council in response to written enquiries.
 - Relevant local and national planning policy and guidance referred to in the text below.
 - Comments made in response to a draft decision statement where I set out my thinking about the complaint.

What I found

Background

7. This is the second complaint Mr C has made to this office about the approach of the Council's planning service towards the Mosque at the centre of his complaint. Mr C lives on a residential road in the Council's area, around 100 metres from a main road where there are various local shops and other local amenities such as pubs and churches. On the main road is a former house converted over 20 years ago into a GP surgery with flat above that later became a dental laboratory. Since 2017 a Mosque has used the building. Running alongside the Mosque is a public right of way that also provides access to the rear of some nearby houses.
8. In February 2019, we issued a decision upholding a complaint Mr C made about the Council's response to service requests that it take enforcement action against the Mosque. The Council said that it could not take enforcement action as it considered the Mosque was not an unauthorised use of the building. This was because the Council understood it to be in the same 'use class' as the previous use of the building (the dental laboratory and before that the GP surgery). Mr C received legal opinion suggesting the Council had not taken account of relevant planning law. We found the Council had not properly considered the legal argument.
9. In response the Council accepted our findings and agreed to reconsider. The result of that reconsideration was the Council decided the use of the building as a Mosque was an unauthorised use. It agreed therefore the use as a Mosque was not immune from planning enforcement action.
10. The Council therefore agreed to reconsider whether it *should* take such enforcement action. In February 2019, it decided that it was not expedient to do so. It is that decision which is the subject of this complaint.
11. When, in 2018, Mr C made his initial complaint to the Council about the Mosque around 30 local households signed a petition of support. On this occasion we have received 10 letters or emails of support from residents who say they have similar concerns to Mr C. He has also made me aware of other expressions of dissatisfaction from local residents with the operations of the Mosque which I will refer to below.

Key law and guidance

12. The Town and Country Planning Act 1990 defines a *“breach of planning control”*. One such breach is where someone carries out development without the required planning permission. This includes using a building for a purpose other than the ‘use class’ of that building, as defined by the Town and Country (Use Classes) Order 1987.
13. The Act says a local planning authority may issue an enforcement notice where it appears to them there has been a breach of planning control and *“that it is expedient to issue the notice having regard to the provisions of the development plan and to any other material considerations”*. The power to take enforcement action is therefore discretionary.
14. The Government also issues guidance to local authorities on the use of enforcement. It says that as well as the law a local planning authority should take account of its own local enforcement plan. It also says: *“Effective enforcement is important to:*
 - *tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;*
 - *maintain the integrity of the decision-making process;*
 - *help ensure that public acceptance of the decision-making process is maintained.”*
15. The guidance also says: *“Nothing in this guidance should be taken as condoning a willful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case. In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:*
 - *there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;*
 - *development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;*
 - *in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.*
16. On its website the Council publishes “A Guide to Enforcement”. This says: *“Investigating officers will always try to negotiate a solution to the problem and try to persuade the contravener to voluntarily remedy the breach of planning control. Most cases are resolved in this way. In some situations this might involve the submission of a retrospective planning application on which you can comment.”*
17. The Council also publishes a scheme of delegation dated 2015. This says that officers have the power to close investigations into breaches of planning control where they find it is not expedient to take action. But only *“having consulted with the relevant committee chair”*. The Council says that in practice this part of the scheme fell into disuse following its original introduction in 2009 due to the number of cases involved. It says committee chairs agreed officers should only refer such cases where the Council had previously refused planning permission.

The Council's decision and further comments

18. A senior Council enforcement officer took the decision it was not expedient to take enforcement action in this case. Before doing so, they recorded asking a senior planning officer for their opinion on *"whether officers would support an application for a change of use"* of the building to a Mosque.
19. The opinion of the senior planning officer said the following:
 - That if the Council received a planning application for a change of use of the building as a Mosque then the operation of the Mosque for the proceeding 18 months would be *"a material consideration"*.
 - The principle of a Mosque in the local area would be *"acceptable in principle [...] subject to its local impact"*, given it lies in an area of mixed housing and business.
 - The Council would *"anticipate"* the majority of users of the Mosque to travel by foot.
 - There was a small car park next to the Mosque and on-street parking nearby. The Council considered *"no significant highway safety issues have arisen"* since the Mosque opened.
 - That while close to homes, the Mosque would be *"unlikely"* to impact on the amenity of local residents and *"certainly not greater than nearby public houses"*. Any disturbance during the day was *"unlikely"* to be harmful and *"disturbance in the evenings and other unsociable hours is unlikely to be a regular event"*.
 - That while it was *"possible to impose planning controls relating to amenity issues that are less than a statutory nuisance"* they did not envisage such a need given the Mosque's *"small scale"*.
20. The enforcement officer said *"in the absence of continuing complaints the senior officer has concluded that officers would support a retrospective application therefore I would recommend that it would not be expedient to pursue enforcement action to force the closure of this valued community Mosque"*.
21. The Council went on to close its enforcement case file. It did not approach the Mosque to discuss it presenting a retrospective planning application permitting the building's change of use. When we asked for more explanation for this the Council said it wanted to decide quickly. It also took account that *"officers had already indicated to the owners that planning permission was not required"*. This advice pre-dates Mr C's first complaint about the Mosque.
22. When Mr C complained about this decision, the Council considered his complaint under its corporate complaints procedure. It has provided two replies to Mr B at 'Stage One' and 'Stage Two' of that procedure. In that correspondence the Council has raised the further points. That:
 - Previous uses of the building did not have conditions covering their hours of business. The dental laboratory had operated *"into the early evening"* and *"workers could often be seen working upstairs very late"*. The Council says *"Mosques do not have restrictions on their opening hours"*.
 - Its planning service had not received any complaints further to those we previously investigated.
 - The Council does not consider vehicle movements are *"any worse now than they were before or could have been given the unrestricted planning use"*.

Highways officers have visited the site “*at different times of day*” and “*not witnessed an unacceptable level of parking*”.

- The Council had not witnessed any noise from “*chanting*” from the Mosque (something reported by those living closest to it). That “*in any event the Council’s environmental health department can deal with noise complaints*”.
 - The Mosque has six off-street parking spaces which would conform with the Council’s parking standards for a place of religious worship of that size.
 - That other commercial businesses, including public houses, operate in the area and the Council’s planning enforcement service has no control over them.
 - It had “*fully taken on board*” the views of residents in deciding it was not expedient to take planning enforcement action.
23. In further comments during this investigation, the Council Highways Manager has said the highways service would not object to a planning application for a change of use of the building to a Mosque. They have said they have visited the site on two occasions and have familiarity with the area. They note the parking next to the building and on street nearby. We asked the Council if it could provide contemporaneous notes or photographs from those visits and confirm when they took place. It has not done so.
24. The Council says its enforcement team has not recorded complaints about the Mosque further to Mr C’s initial complaint (i.e. that we decided in February 2019).
25. In representations to us, Mr C and those residents who support his complaint have said:
- The Mosque opens in the early morning, sometimes at 5:00am and activities can go on until late in the evening. Traffic movements to and from the Mosque can cause disturbance as well as noise from inside the building.
 - The Council is wrong to say the Mosque does not cause parking problems. Mr C provides photographs which show cars parked on both sides of local streets (including that where he lives) and blocking pavements. Cars parking for the Mosque also block the right of way to the side of the building.
 - The Council is taking an inconsistent line. Mr C has provided me with two examples of where the Council has refused planning permission for Mosques because of the likely impact on local residents’ amenity through visitors or parking impacts.
 - The Council has under-recorded the number of complaints about its decision that it is not expedient to take enforcement action. He has provided me with copies of eight emails or letters sent by other residents, some of which the Council acknowledged receiving. I note one of the emails was wrongly addressed.
 - Mr C also notes that support for his first complaint shows there is wider dissatisfaction with the activity at the Mosque. So does the response to public consultation when the Mosque sought planning permission for changes to the exterior of the building (extensions front and back).

My findings

26. I find fault in how the Council decided it was not expedient to take enforcement action in this case. I have considered first the justification put forward by the Council for its decision.

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27. The Enforcement Officer gave weight to advice received from a senior planning officer. This said planning officers were likely to be supportive of a retrospective planning application for a change of use to allow the building's use as a Mosque. It does not follow from the senior planning officer's advice therefore, that enforcement officers could resolve to take no action in this case. The advice pointed towards encouraging a retrospective planning application.
 28. Further, taking this line would be consistent with the Council's own enforcement policy which encourages this approach. The Council's enforcement policy suggests that it will usually, as a minimum, encourage someone in breach of planning control to submit such an application. Government advice also makes clear that for breaches that are not minor (or the most serious) a retrospective planning application will be a preferable course of action.
 29. The Council's enforcement decision contains no explanation for why officers decided to depart from policy. I consider failing to take that policy into account flawed its decision making.
 30. Second, I also find the Council did not address in its decision a further relevant factor introduced by the senior planning officer's advice. The senior planning officer clearly based their advice on certain assumptions. The officer "*anticipated*" most visitors to the Mosque would arrive by foot. Similarly, he considered the Mosque would be "*unlikely*" to harm amenity to residents. He based these views on experience of similar small-scale Mosques and I have no reason to challenge these opinions. But as the advice pointed out if the Council received a retrospective planning application then the Mosque's operations since it opened would be a material planning consideration.
 31. It flows from the Senior Planning Officer's advice therefore the Council could rely on more than assumptions when considering the impact of the Mosque. It could consider the actual impact. I find no mention of this important consideration in the enforcement officer's report. That was a fault.
 32. Third, the decision also hinged on the "*absence of continuing complaints*". This is clearly wrong. The Council knows from the past petitions it has received about the change of use that some nearby residents have long-standing concerns about the use of the building as a Mosque. Their original complaint and the response to the application made by the Mosque to build extensions all cited the impacts of parking, noise, traffic congestion and so on. The purpose of the complaint about the building's unauthorised change of use was because they wanted the Council to engage with those concerns.
 33. I consider the Council obliged in its enforcement decision to take account of these concerns. Government advice makes clear that decisions about enforcement engage the wider issue about the need for integrity in the planning process. Its enforcement decision gave no scrutiny of the views of residents affected by the Mosque's operations. I consider it insulting to residents to suggest their views were "*fully taken on board*" in its decision. They were not and that too was fault.
 34. I recognise that since making its decision the Council has sought to offer further clarification for its position and provided more reasoning. In doing so I find it has introduced irrelevant considerations. In particular:
 - In comparing the previous unauthorised use of the building as a dental laboratory with the current use. The Council must consider the case for enforcement against the use of the building as a Mosque on its merits. The

previous use of the building for an unrelated and unauthorised use has no relevance.

- It is also irrelevant the Council previously gave advice to the Mosque that it did not need planning permission. I accept that may cause embarrassment to the Council but that is no reason not to invite a retrospective application.
35. I recognise the Council has provided more information from its Highways service which could be relevant to its decision on enforcement. On its own I do not find this enough to outweigh the many concerns I have about the Council's decision set out above. In addition, I also find the analysis lacking in detail. The Council has not explained such matters as when it carried out its visits to assess parking impacts. It is no substitute for the detailed analysis I would expect to find in a planning officer report considering a detailed planning application.
 36. This also brings into focus there has been no detailed analysis of the noise impacts associated from the Mosque whether resulting from its hours of opening or activities inside. There has been no adequate consideration of this matter whereas a retrospective planning application would require planning officers to seek views from the environmental health service. These were matters the enforcement service should have weighed in its decision.
 37. In setting out my analysis above I have noted the government advice that a local planning authority should not pursue enforcement action for the sake of it. If satisfied that it would give permission to the unauthorised development without conditioning it, then it can choose not to pursue enforcement action. In considering the impact of the fault in this case I am conscious therefore that even after following a proper process the Council could still resolve not to take any enforcement action. But it must follow proper process to arrive at such a decision.
 38. For the reasons set out above I find it has not done so here. Consequently, I cannot be satisfied that if the Council had taken a decision without fault in this case that it would have reached the same conclusion. That causes injustice to Mr C and others because it means the Council's decision cannot be relied on.
 39. I set out below actions the Council has agreed to remedy this injustice. However, before I do it is also appropriate I comment on two further strands of the complaint. First I note the Council took this decision contrary to its published scheme of delegation, which required it to seek approval for its decision from a committee chair. I accept this part of the scheme may have fallen into disuse for the reasons given. But it is fault for the Council to have an outdated scheme in publication.
 40. I accept this fault does not result in injustice. Because had the scheme been updated to reflect practice it would not have made a difference to the decision. But the Council has agreed further action to address this matter also.
 41. Second I have noted the comments of Mr C around the right of way issue. It does not affect him directly but some of those who support his complaint. I can see from photographs that vehicles parked outside the Mosque have blocked the right of way on occasion, which blocks vehicle access to houses although not pedestrian access. The Council will need to consider if that is a material planning consideration, should the Mosque submit a retrospective planning application. But otherwise the Council will not be involved in this matter. Because where vehicular access to homes is blocked by the actions of visitors to the Mosque, then that is a civil matter between the parties. It is not something for the Council to address through its Rights of Way officer.

Agreed action

42. I welcome that the Council has accepted my findings set out above. In considering how the injustice to Mr C should be remedied, the first principle we consider is that the complainant should be put back in the position they should have been in, had no fault occurred. It flows from the above that to remedy this complaint the Council must reconsider its approach to enforcement in this case. In addition, after two upheld complaints Mr C will want assurance of the Council's ability to reconsider this matter in a way that assures transparency and fairness. The action the Council has agreed reflects this.
43. The Council has agreed that within 20 working days of this decision it will:
- a) Provide a written apology to Mr C accepting the findings of this investigation.
 - b) Commit to undertaking a further assessment of the case for enforcement action against the unauthorised Mosque at the centre of this complaint. This must take account of my findings above. It must be undertaken by a senior officer with no previous involvement in the case. If it is not possible for the authority to identify such an officer, then it will invite a senior enforcement officer from a neighbouring authority to undertake that assessment.
 - c) In the event the Council resolves to invite a retrospective planning application and the Council receives such an application then it can determine this in line with its usual procedures. However, it should ensure that if the application will not be decided by a planning committee that the planning case officer is one with no previous involvement in the case. Alternatively, the Council can refer any application to its planning committee for a decision.
 - d) In the event the Council resolves not to invite a retrospective planning application or that no such application is forthcoming and the Council resolves at that stage not to take enforcement action, it will refer that decision to a planning committee for its approval.
 - e) It will commit to amending that section of its scheme of delegation for officers which covers decisions where it is not expedient to take enforcement action, to reflect its practice. It will complete this amendment at the time of the next review of the policy.

Final decision

44. For reasons set out above I have upheld this complaint finding fault by the Council causing injustice to Mr C. The Council has agreed action which will remedy Mr C's injustice. Consequently, I can complete my investigation.

Investigator's decision on behalf of the Ombudsman