

Complaint reference:
13 003 399

Complaint against:
London Borough of Southwark

The Ombudsman's final decision

Summary: There is evidence that the Council has considered the issue of gating the square near Mr B's property at night (to prevent antisocial behaviour) but there is little record to show what it considered and whose views it obtained in the process. The Council has agreed to carry out a review of its decision not to gate the square, including further consultation and a formalised report for the Cabinet Member to consider.

The complaint

1. Mr B complained that the London Borough of Southwark (the Council) in respect of the night-time nuisance in a square near his property:
 - failed to consult with residents about the problem;
 - failed to properly articulate their concerns to the decision makers considering whether to gate the park; and
 - failed to take any action to mitigate the nuisance which seriously affects Mr B and his young family.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A91*)
3. She cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)

How I considered this complaint

4. I have:
 - considered the complaint and the documents provided by the complainant;
 - made enquiries and further enquiries of the Council;
 - considered the comments and documents the Council provided;
 - considered comments from the Council, the complainant and the police on my provisional view.

What I found

5. Mr B's lives in a flat bordering a public square in Southwark adjacent to the Thames river-path. He says for years he has experienced anti-social behaviour and noise from people in the square, particularly late at night and during the summer. It disturbs his two young children and he has moved away for periods of time when the situation gets unbearable. He says other residents share his concerns and one has sent me details of the incidents she has experienced recently.
6. Since 2010 Mr B has been asking the Council to gate the square to limit public access and resolve the night-time problems. On 13 September 2010 Mr B's ward councillor met with local residents and Officer C (Parks and Open Spaces Manager). There is no record of what was discussed or agreed beyond the topic of ongoing night-time disturbances in the square.
7. Mr B says the meeting agreed that Officer C would consider a review of the policy not to gate public open spaces and take the specific issue of gating the square back to cabinet and senior council officers.
8. The Council has provided evidence that in February 2011 the Cabinet member with the portfolio for Environment, Transport and Recycling considered the issue of gating the square. His view was that given the site's proximity and relationship to the riverside walk, he was not in favour of the proposal. He said he was happy to arrange a further meeting with Mr B and other residents to discuss the anti-social behaviour and other possible solutions. The Council says the cabinet member visited Mr B at his home on 9 March 2011.
9. There is no more evidence of the issue being raised around that time. But the Council then carried out a consultation on its draft Open Space Strategy from January 2012 until May 2012. The draft strategy was amended in the light of the consultation comments and adopted at the end of January 2013. It broadly supported maintaining open access to public spaces including the square.
10. Mr B asked the Council in November 2012 to review its decision not to gate the square. It responded in December 2012 saying after further consideration with other officers and the cabinet member it had decided to retain the square's 24 hours a day publicly accessible character on behalf of the vast majority of responsible visitors.
11. Mr B and other residents continued to complain. Officer C then contacted the Night-time Economy Team (NTE) in the area regarding incidents of nuisance in the square between July 2012 and December 2012 compared to the same period in 2011. She also liaised with the senior director and the cabinet member.
12. Mr B then made a formal complaint in February 2013 about officer C saying she had consistently failed to acknowledge his ongoing concerns and failed to respond to his repeated enquiries.
13. Officer C's manager Officer D met with Mr B to discuss his concerns in March 2013 and the Council responded to the complaint. It said the decision not to gate the square was taken by senior officers in consultation with leading Councillors. There were two reasons for the decision:
 - The Council aims to ensure the River Thames and Thames path are accessible to everyone in accordance with its Open Spaces Strategy; and
 - It does not have the resources to install the gates or to manage their closure.

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14. It said in reaching the decision it had noted that the reports of incidents to the NTE were less during 2012 than in 2011 and the noise and nuisance teams had no reports of incidents to justify the Council taking any further action.
 15. Mr B remained dissatisfied and escalated his complaint. The Council replied upholding its decision not to gate the square. It maintained it had fully considered residents' concerns and put the matter to Councillors to consider but given the consultation on its Open Spaces Strategy it was committed to keeping access to the river-path open.
 16. In respect of dealing with the antisocial behaviour it outlined a meeting officer C had held with the police in April 2013. The Drug and Alcohol Action Team and the Licensing Team had also attended. It agreed to install signage indicating it was a Designated Public Place Order (DPPO), to increase the number of patrols between Special Constables and the NTE in the summer on a Friday and Saturday night and a reassurance visit from the police to remind residents that enforcement of the DPPO is a police matter and residents should call 999 for serious incidents and 111 for people gathering, drinking and making a noise.
 17. Mr B then complained to the Ombudsman. He says:
 - the police are in favour of gating because they can only deal with incidents as they occur and cannot provide a permanent solution;
 - the Council has misrepresented him as a lone biased voice;
 - the Council officer have failed to properly represent all the issues to the Councillors making the decisions and have a steadfast opposition to gating;
 - the Council has never carried out proper consultation on this issue; and
 - there was an improvement in incidents in 2012 because an Olympic delegation took over the square so it was not open to the public.
 18. I asked the Council to consider carrying out a further consultation on the specific question of gating the square and reconsider the matter taking into account the views of all interested parties including residents, local businesses and the Police
 19. Initially it did not agree to this but suggested Mr B takes part in the consultation on the Neighbourhood Plan for that area. I did not consider this was an adequate alternative as again it is too wide to consider the specific problem of anti-social behaviour in the square and the deadline for responses has passed.
 20. Mr B has also informed me he is applying for a community grant for the cost of gating the square but is unlikely to succeed because of the Council's policy on maintaining public access.
 21. The police superintendent for the area met Officer D in November 2012 to discuss the situation and possible ways forward. The Superintendent has written to me following that meeting setting out the police views on this issue. She said she had first met Mr B in March 2011 at a meeting with two Council members (one of whom was the cabinet member) and a senior officer to discuss anti-social behaviour at night in the square. She also said that in 2011 the police set up a Partnership Tasking Group (PTG) to analyse current data and intelligence to highlight issues for discussion on a medium to long-term basis. Jointly with the Council, the police also in 2011 set up the Night-Time Economy Team (NET) to carry out increased patrols in the area and her officers have been part of the Safer Neighbourhood Team for seven years, accountable to Ward Panels.

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22. She said between November 2012 and November 2013 the police had received nine reports of incidents in the square. She had tried to trace the numerous calls Mr B said he had made to the police but believes the number he had used was no longer in use.
23. Neither the PTG, the NET or the Cathedral Ward Panel has raised the square as an issue of concern or priority. She said that she did not accept there had been severe anti-social behaviour in the area nor that it had been a drain on police resources.

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Analysis

26. I accept that anti-social behaviour in the square causes Mr B and his family along with other residents some nuisance. The responsibility for dealing with public nuisance of this kind lies with the police. Mr B argues that the situation is so bad that the only solution is to gate the square. He says the police agree with him because the amount of resources they use on policing the incidents is greater than the costs of the gates. The evidence recently provided by the police indicates that it does not share those views.
27. There is no statutory requirement to gate a public open space. It is a decision for the Council to make taking into account all the relevant factors. It says it has done so, including carrying out extensive consultation on its Open Spaces Strategy. This concluded that public access to the river-path should be paramount.
28. There is evidence that the issue was discussed with Councillors, the Cabinet Member, the police and residents in 2010 and 2011. The decision was reached not to gate the square.
29. Mr B asked for the decision to be reviewed again in late 2012. There is evidence that the matter was discussed by officers in the Parks and Open Spaces team and with councillors including the Cabinet Member. Officers also obtained information from other sources within the Council regarding the night-time nuisance and decided to maintain the decision not to gate. There is no record of what was discussed or considered, no evidence that the views of the police were obtained at that stage and there is no officer report setting out all the issues involved.
30. While I accept the views from the consultation on the Open Spaces Strategy provide valid and useful information, I do not consider it is a substitute for specific consultation on the question of gating the square.
31. It is not my role to say that the Council should gate the square and its reasons for not doing so are valid. But given the strength of feeling in this case I consider there is a lack of evidence that the matter has been fully and properly considered.
32. Following my provisional view I welcome the steps the Council has taken to discuss this specific issue with relevant stakeholders including the police.

Agreed action

33. I am pleased to say the Council has agreed to draft a formal report for consideration by the cabinet member setting out the views of local residents and other local stakeholders on the matter. The report will be subject to the Council's

formal decision process, including being published on the Council's Forward Plan of key decisions. This is published on a monthly basis via the Council's website, which will afford residents the opportunity to comment further upon the report. The Council estimates it will be approximately three months before the report will be available for viewing as outlined.

Final decision

34. I consider this is a fair and reasonable way of resolving the complaint and I have completed my investigation on this basis.

Investigator's decision on behalf of the Ombudsman