

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint about
Brentwood Borough Council
(reference number: 22 008 221)**

13 September 2023

The Ombudsman's role

For almost 50 years we have independently and impartially investigated complaints about councils and other organisations in our jurisdiction. If we decide to investigate, we look at whether organisations have made decisions the right way. Where we find fault has caused injustice, we can recommend actions to put things right, which are proportionate, appropriate and reasonable based on all the facts of the complaint. We can also identify service improvements so similar problems don't happen again. Our service is free.

We cannot force organisations to follow our recommendations, but they almost always do. Some of the things we might ask an organisation to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

We publish public interest reports to raise awareness of significant issues, encourage scrutiny of local services and hold organisations to account.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Ms X The complainant

Report summary

Environmental Services & Public Protection & Regulation – pollution and noise

Ms X complained the Council did not properly investigate or act to resolve matters when she reported various nuisances from a restaurant next to her home. She says this caused her distress and adversely affected her health and enjoyment of her home.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the injustice caused, we recommend the Council:

- apologises to Ms X for the faults identified and the impact those faults had on her;
- creates an action plan to investigate all outstanding planning, environmental health, and licensing issues without delay, and decide if the Council should take any enforcement action. It should share a copy of this plan with us;
- assigns a single point of contact for Ms X. They should meet with Ms X to discuss her concerns and:
 - explain the procedures the Council will follow to investigate the issues;
 - agree how often it will keep Ms X updated of progress; and
 - ask Ms X when the reported issues are at their worst. It should then properly consider what days and times it should visit Ms X (without notice to the restaurant) to monitor the issues, and how often.
- pays Ms X a total of £3,450, comprising of:
 - £2,000 to recognise the distress caused by the uncertainty that remains about how things may have been different had the Council acted without fault in response to the various issues she reported;
 - £750 to recognise the distress caused by the uncertainty that remains about how things may have been different had the Council properly considered the powers available to it to enforce planning conditions, in good time;
 - £600 to recognise the avoidable distress, frustration, and confusion caused by its failure to communicate with her properly and respond to all the concerns she raised in her complaint; and
 - £100 to recognise the avoidable time and trouble caused to her by the Council's failure to consider her concerns via its complaints process sooner.
- writes to any other residents who made similar complaints or alleged nuisance reports about the restaurant from 2021 onwards, explaining we identified fault with how it investigated complaints about the restaurant. It should invite them to complain via the Council's complaints procedure within three months if they want to do so. For any complaints received, the Council should properly investigate and remedy any injustice in line with our findings in this case,

adjusting as appropriate based on the injustice compared to that experienced by Ms X. It should direct any other complainants to us if they are not satisfied with its complaint response.

We also recommend the Council:

- reviews its arrangements for collaborative working between its environmental health, licensing, and planning teams and ensures a clear process is in place for environmental health consultation on planning applications;
- reviews its environmental health enforcement and statutory nuisance policies, in consultation with the planning team where needed, to address the faults we have identified. In carrying out this review it should ensure the new policy sets out:
 - a clear process, with timescales, for investigation of all statutory nuisances (not just noise), and licensing breaches;
 - how the Council will consider how often and at what days/times it should visit to monitor reported issues;
 - expectations for regular communication with complainants including clearly communicating investigation outcomes in writing;
 - the threshold at which the Council will refer repeated nuisance complainants to its complaints procedure;
 - the threshold at which the Council will make complainants aware of their right to take private action against an alleged nuisance via the Magistrates' Court under section 82 of the Environmental Protection Act 1990; and
 - how the Council will keep records of its considerations and decision making.
- issues reminders to relevant staff involved in the Council's corporate complaints procedure about the importance of properly responding to all issues raised by a complainant; and
- shares a copy of our final report with:
 - all relevant staff across environmental health, licensing, and planning teams; and
 - a committee with responsibility for the relevant issues, to reflect on the lessons learned.

The Council has accepted our recommendations.

The complaint

1. Ms X complained the Council did not properly investigate or act to resolve matters when she reported various nuisances from a restaurant next to her home from 2017 to 2022. She says the Council did not properly:
 - consider planning applications by the restaurant because it did not consult environmental health teams;
 - investigate or enforce breaches of planning control by the restaurant;
 - investigate or act about her reports of nuisances from the restaurant including noise, smells, fumes, foul water and chemicals, vermin, and fire hazards; and
 - respond to her many reports, or her formal complaint about these issues.
2. Ms X says this caused her distress and adversely affected her health and enjoyment of her home. She wants the Council to take enforcement action against the restaurant, so she is no longer impacted by these issues.

Legal and administrative background

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We 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)
4. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
5. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (Local Government Act 1974, sections 26B and 34D, as amended)
6. We cannot investigate a complaint where the body complained about is not responsible for the issue being raised. (Local Government Act 1974, section 24A(1), as amended)
7. The law says we cannot normally investigate a complaint unless we are satisfied the body knows about the complaint and has had an opportunity to investigate and reply. However, we may decide to investigate if we consider it would be unreasonable to notify the body of the complaint and give it an opportunity to investigate and reply. (Local Government Act 1974, section 26(5))
8. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we will weigh up the available relevant evidence and base our findings on what we think was more likely to have happened.
9. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (Local Government Act 1974, section 34(3), as amended)
10. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (Local Government Act 1974, section 26D and 34E, as amended)

Planning permission and enforcement

11. Councils may grant planning permission for the development of land (including its material change of use), subject to conditions.
12. Councils can take enforcement action if they find planning rules have been breached. However, councils should not take enforcement action just because there has been a breach of planning control. Government guidance says planning enforcement is discretionary and formal action should happen only when it would be a proportionate response to the breach. (National Planning Policy Framework July 2021, paragraph 59)

Statutory nuisances

13. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take reasonable steps to investigate potential 'statutory nuisances'. Typical things which may be a statutory nuisance include:
 - noise from premises or vehicles, equipment or machinery in the street;
 - smoke from premises;
 - smells from industry, trade or business premises;
 - insect infestations from industrial, trade or business premises; and
 - accumulation of deposits on premises.
14. For the issue to count as a statutory nuisance, it must:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises; and/or
 - injure health or be likely to injure health.
15. There is no fixed point at which something becomes a statutory nuisance. Councils will rely on suitably qualified officers (generally an environmental health officer, or EHO) to gather evidence. They may, for example, ask the complainant to complete diary sheets, fit noise-monitoring equipment, or undertake site visits. Councils will sometimes offer an 'out-of-hours' service for people to contact, if a nuisance occurs outside normal working time.
16. Once the evidence-gathering process is complete, the environmental health officer(s) will assess the evidence. They will consider factors such as the timing, duration, and intensity of the alleged nuisance. The officer(s) will use their professional judgement to decide whether a statutory nuisance exists.
17. Councils can also decide to take informal action if the issue complained about is causing a nuisance, but is not a statutory nuisance. They may write to the person causing the nuisance or suggest mediation.
18. A member of the public can also take private action against an alleged nuisance in the Magistrates' Court. If the court is persuaded they are suffering a statutory nuisance, it can order the person or people responsible to take action to stop or limit it. This process does not involve the council, but it is good practice for councils to draw a complainant's attention to their right to private action under section 82 of the EPA.

Business waste

19. The Council's website says all businesses within its area should manage their waste properly, in line with the responsibilities set out in the Government's Waste

Duty of Care Code of Practice. This says businesses that do not meet their duty of care may face prosecution by the local authority and a fine or criminal record.

Prevention of damage by pests

20. The Council has powers under the Prevention of Damage by Pests Act 1949 to take enforcement action where it considers it necessary to address vermin issues. The Act requires councils to “take such steps as may be necessary to secure so far as practicable that their district is kept free from rats and mice”.

The Human Rights Act

21. The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to. The Act requires all councils, and other bodies carrying out public functions, to respect and protect individuals’ rights.
22. The First Protocol, Article 1 of the Human Rights Act says every person is entitled to the peaceful enjoyment of their possessions, including their home and land.
23. Our remit does not extend to making decisions on whether or not a council has breached the Human Rights Act – this can only be done by the courts. But we can decide whether a council has had due regard to an individual’s human rights in its treatment of them, as part of our consideration of a complaint. In practical terms, councils will often be able to show they have complied with the Human Rights Act if:
- they can show they have considered the impact their decisions will have on the individuals affected; and
 - there is a process for decisions to be challenged by a review or appeal.

How we considered this complaint

24. We produced this report after examining relevant documents and discussing the complaint with Ms X.
25. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

What happened

26. Ms X lives next to a restaurant that opened in 2017. The Council granted planning permission for various works to the restaurant and set a planning condition which required screening along the shared boundary with Ms X to protect her amenity from overlooking. The restaurant did not comply with this condition.
27. In 2018, Ms X and other residents started complaining to the Council about noise and smells from the restaurant. The Council reviewed the restaurant’s business licence in late 2018 and issued the reviewed licence in early 2020. This included conditions such as:
- all external doors and windows must be kept closed after 8pm, other than for access or egress;
 - the external doors for the kitchen and food preparation rooms on Ms X’s side of the building must have suitable door closers to avoid loud impact noise;

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- an “adequate number” of external, lidded bins must be in place to store any waste. These must be emptied regularly, and cleaned professionally at least weekly;
 - the floor of the bin area on Ms X’s side of the building must be maintained to be smooth, hard-wearing, and free from holed/pitted areas or cracks;
 - waste bottles and refuse must not be disposed of into the outside bins after 8.30pm or before 8am; and
 - waste must not be collected by waste-collection contractors after 9pm or before 8am.
28. Ms X continued to report issues with noise and smells, apart from for periods when the restaurant was closed due to COVID-19 restrictions.
29. Ms X told the Council in early 2021 the restaurant had never complied with the 2017 planning condition to erect boundary screening. The Council chased up the restaurant and it made a new application to change the screening proposal it had previously agreed. The Council considered this and refused the application.
30. In March 2021, the restaurant started to build separately enclosed outdoor dining tables at its rear. The Council told the restaurant it must stop the works and seek planning permission first, along with permission for other already completed works including a side extension, veranda, and the kitchen extraction system. The restaurant completed the work on the separately enclosed outdoor tables regardless and began using them while waiting for the retrospective planning decisions. The Council refused both applications in August 2021. The restaurant later appealed against these decisions to the Planning Inspectorate in April 2022. The Planning Inspectorate is the body responsible for considering appeals from planning applicants about council decisions.
31. The Council also told the restaurant it would need to apply for a new premises licence because of its changes to the outdoor areas. The restaurant failed to do this despite multiple requests and written warnings from the Council over the following year.
32. Also in March 2021, Ms X began to complain to the Council again about nuisances from the restaurant. Over the following year, Ms X frequently complained to the Council about the restaurant. She said enjoyment of her home and garden was affected due to:
- noise from the kitchen, including the kitchen door repeatedly slamming shut. She said the door did not have a suitable door closer as required by the licence. She also said it was often left propped open in contravention of the licence conditions;
 - noise from use of the bin area, and from deliveries and collections, including outside the hours allowed by the licence;
 - noise from customers, particularly when leaving the restaurant, sometimes drunk;
 - smells from the bin area, and smells and fumes from the kitchen extraction system, which did not have planning permission. She said the smells and fumes were making her unwell, causing nausea and headaches;
 - foul water and chemicals draining into her garden from the kitchen and bin area over the shared boundary, particularly when bins were cleaned. She said this damaged foliage in her garden;

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- excess waste stored in the bin area, not within lidded bins. She said this attracted vermin which then went into her garden; and
 - fire hazards caused by the restaurant storing cooking embers in the bin area in an unsuitable container.
33. In July 2021, the Council installed noise monitoring equipment in Ms X's home for three weeks. Ms X provided the Council with completed logs of noise incidents for this period. Four weeks later the Council told her it had decided there was no statutory noise nuisance. Ms X disagreed and asked the Council to visit her when the issues were at their worst, on Friday and weekend afternoons in good weather. It did not respond to this request.
34. Ms X continued to report issues. The Council visited the restaurant in October 2021 and spoke to the restaurant owner about delivery noise and fumes from the kitchen extraction system. It also issued a warning to the restaurant in September 2021 that it was in breach of its licence conditions for various reasons, including because the kitchen door on Ms X's side of the building did not have a suitable door closer to avoid loud impact noise. There was no evidence it followed up on this issue further.
35. In April 2022, Ms X made a formal complaint about the various issues with planning and nuisances she had reported since 2017. The Council responded at Stage 1 of its complaints procedure a month later. It said there had been no failings in its planning processes, and there was no evidence of statutory noise or smell nuisance so it could not take any action.
36. Ms X continued to report issues with the restaurant and escalated her complaint to Stage 2. The Council responded at Stage 2 in July 2022, at which point it had visited Ms X's property once to observe noise and smells. It had visited the restaurant twice to discuss licensing and review CCTV footage. It said its decision on the complaint remained the same.
37. After the complaint response, the Council carried out a further three visits to Ms X's property and three visits to the restaurant to speak to staff. Ms X came to us in September 2022, and continued making regular reports to the Council.
38. In early 2023, the Planning Inspectorate dismissed the restaurant's appeals about planning permission for the kitchen extraction system, veranda, side extension, and separately enclosed outdoor dining tables. The Planning Inspectorate said:
- the Council had told it the kitchen extraction system was causing odour problems, which the restaurant had not resolved. It agreed the veranda and kitchen extraction system caused odour issues; and
 - the development was not appropriate for its location because of the likely effects of pollution on health and living conditions. It would be harmful to the living conditions of neighbouring occupiers, particularly in terms of odour.

What we have and have not investigated

39. Ms X began reporting issues to the Council in 2017. She does not agree with the Council's 2016 and 2017 planning decisions. She is also of the view the restaurant's kitchen door and bin area should not be next to her boundary. When the bin area was sited next to her boundary in 2017, this change of site layout was not approved via the planning process, but she believes it should have been subject to planning and building regulations approval. The law says we cannot investigate events which happened more than 12 months before somebody complains to us, unless we decide there are good reasons to do so. Ms X

complained to us in September 2022. After March 2021, around the time the restaurant re-opened following COVID-19 restrictions, Ms X was continuously reporting concerns. We consider there were delays by the Council in responding to Ms X's concerns, and it should have considered this via its complaints process sooner. Therefore, we have decided there are good reasons to look back further than 12 months and investigate events from January 2021 onwards. However, we are satisfied Ms X could have complained about events before January 2021 earlier and there are no good reasons to investigate those earlier events now.

40. One issue Ms X reported to the Council was fire hazards caused by the restaurant. The local fire authority is the body responsible for investigating this issue, not the Council, and therefore we cannot consider this as part of this complaint. Ms X would need to complain separately about this issue to the fire authority first before we could consider it.

Analysis

Planning permission and enforcement

41. The Council refused the restaurant's 2021 application to amend the proposal for boundary screening it had agreed in 2017. After this, the Council did not properly consider, in good time, whether it should take further action to enforce this planning condition. In May 2021 the Council told Ms X it "could not force" the restaurant to comply with the condition. This was wrong, and in our view evidences the Council did not properly consider enforcement action. A year later, Ms X asked the Council about this again and it said it was still pursuing the issue, but there was no evidence it had done anything further. In mid-2023, the Council said it was still pursuing this with the restaurant and had accepted a further planning application to amend the screening proposal, two years after it refused the previous amendment. We consider the Council took too long to resolve this issue and did not properly consider the enforcement powers available to it. This was fault.
42. Ms X told the Council in March 2021 the restaurant was continuing to build the separately enclosed outdoor dining tables, despite the Council having told it to stop while it sought planning permission. The Council told Ms X it would visit the site again, but there was no evidence it did so, which was fault.
43. In August 2021, the Council considered retrospective planning applications for the separately enclosed outdoor dining tables, kitchen extraction system, side extension, and veranda. At the time of this planning consideration there had been several complaints from residents about the restaurant and environmental health issues. The Council's records showed it decided it should consult its environmental health service in making these planning decisions. Although planning officer reports do not need to include every possible consideration, they should include the principal controversial issues. It is clear the Council considered input from environmental health to be a principal controversial issue. However, the Council's reports of its planning decisions showed it did not consider comments from environmental health in making its decisions. This was fault.
44. The Council took around 16 weeks to consider these retrospective planning applications. Its website says it will issue planning decisions within 8 weeks for minor and 13 weeks for major applications. This delay was fault.
45. Following the Council's refusal of the applications in August 2021, the restaurant had six months to appeal to the Planning Inspectorate. The restaurant appealed eight months later in April 2022. The evidence showed the Council knew the

restaurant planned to appeal from at least four months after its decision. Therefore, we do not consider the Council was at fault because it paused planning enforcement considerations while the Planning Inspectorate appeal was ongoing.

Noise, smells from the bin area, and smells and fumes from the kitchen extraction system

46. We are not satisfied the Council took reasonable steps, as required by statutory nuisance legislation, to investigate the issues Ms X reported, or followed its own procedure for investigating statutory nuisances. Our view is it was at fault in how it considered Ms X's reports about noise, smells, and fumes.
47. The Council did not properly record all Ms X's reports as service requests, so it does not hold proper records of the frequency of the issues. It also failed to keep records at the time of its decision making, in line with its policies and procedures for environmental health enforcement.
48. When it carried out three weeks of noise monitoring in mid-2021, it did not keep proper records of how it considered this. It told Ms X it had decided there was no statutory noise nuisance without having first considered all the recordings she provided. When it responded to the Stage 1 complaint a year later, it again said it had not found any evidence of noise nuisance but had carried out no further noise monitoring. It had not visited Ms X's home to observe noise in 2021 or 2022. In its Stage 2 complaint review it restated its position, having only carried out one visit to Ms X to observe noise, at midday on a weekday. The Council's procedure for statutory noise nuisances says it will carry out at least three visits, at suitable times, to witness noise before making its decision. It did not do this before its Stage 2 response, which was fault.
49. The Council also had powers to address the noise issues Ms X reported by enforcing the licence conditions it had placed on the restaurant. There is not enough evidence it properly followed its process for licensing enforcement. The evidence showed that between March 2021 and August 2022, the Council repeatedly identified issues around the licence, had various communications with the restaurant about non-compliance, and sent multiple warnings. However, there were no clear records from the time to show the Council properly considered whether further action was warranted because of this repeated failure to comply. Therefore, we cannot be satisfied the Council properly considered this, which was fault.
50. The Council said in its Stage 1 complaint response it had not found any evidence of smell nuisance. However, it had not followed its own process for making such decisions. It had visited the restaurant once seven months earlier to inspect the kitchen extraction system. It had not carried out any visits to Ms X's home to observe how smells and fumes may have affected her. There was no evidence the Council properly considered or responded to a request from Ms X for it to consider air quality monitoring. It also never explained what decision it had made about fumes, which it should have considered separately to smells.
51. When the Council carried out visits to observe noise and smells after the complaint response, there was still no evidence it properly considered what times it should visit. It did not provide a clear explanation of why most of its visits were not at times when Ms X had said the issues were at their worst.
52. The Council's decision about smells and fumes contradicts comments it recorded from its environmental health service in mid-2021 about the kitchen extraction

system. It said, “it would appear that it is not particularly effective at preventing odour from the cooking affecting other residential properties. This is believed to be as a result of the smoke component of the extracted air as smoke particles are generally of a larger size and are less able to be removed by the filtration and odour control system”. While this does not necessarily mean the smells and fumes were a statutory nuisance, it shows there were contradictory views within the Council. There were no records to explain this difference of opinion, or what action officers took to reconcile this.

Foul water and chemicals draining into Ms X’s garden

53. Ms X began reporting foul water and chemicals draining into her garden from the kitchen and bin area in August 2021. The Council did not take any action until March 2022, after Ms X chased this several times. This delay of seven months was fault. At this point it asked Ms X to provide video evidence, which she had already done when she first reported it. She provided more information about the issue, but it then did not respond. This was fault.
54. When the Council eventually discussed the drainage issues with the restaurant, there was no evidence it specified what remedial action was required by what deadline, as set out in its environmental health enforcement policy. It repeatedly accepted assurances from the owner the issue would be addressed and did not consider any other action or escalation, even though nothing changed. There was also no evidence it updated Ms X about any of these visits or proposed actions, even though she continued to report drainage issues throughout 2022. This was fault.

Mismanagement of waste and issues with vermin

55. The Council told Ms X it was addressing the issue of excess waste via its licensing powers. We are not satisfied it properly followed its process for licensing enforcement. There was also no evidence it considered whether it should address the reported excess waste under its statutory nuisance powers or business waste policy. This was fault.
56. There was also no evidence the Council considered whether it should take any action about the vermin issues Ms X reported, such as using its powers under the Prevention of Damage by Pests Act 1949. This was fault.

Communication and complaint handling

57. The way the Council communicated with Ms X, and the information it provided in response to our enquiries, suggested it considered the actions of its planning, licensing, and environmental health teams to be separable. We do not consider this approach to be appropriate. The Council had various powers available to it to address the issues reported by Ms X and had discretion to choose which of its powers it used. However, the onus should not be on the complainant to navigate Council processes, and Council teams should properly communicate with each other to provide a coordinated response from the Council as a whole. We consider the Council’s failure to deal with Ms X’s concerns and queries in a coordinated way was fault.
58. The Council often did not respond to Ms X or keep her updated when it said it would. There were several times she did not receive updates for one to two months, despite frequently contacting the Council. Ms X continued to report issues after she came to us until the end of 2022, but the Council did not properly acknowledge or look into new reports after this point. The Council’s failure to communicate with Ms X properly was fault.

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59. The Council also should have considered Ms X's concerns via its complaints process earlier, given the frequent issues she raised over a prolonged period. It was clear she was dissatisfied with the service the Council was providing. It also did not respond to the complaint properly, which was fault. In its response it:
- only referred to three of the many reports made by Ms X across 2021 and 2022;
 - did not respond at all to the parts of her complaint about smells from the bins, fumes, foul water and chemicals, excess waste, or vermin;
 - did not properly explain what process it had used to address the issues. It was investigating some issues as licence breaches, but it did not explain this;
 - failed to address Ms X's complaint that she was repeatedly passed between planning and environmental health teams and no one at the Council took overall responsibility. In fact, it continued to separate the issues out; and
 - decided at Stage 2 that the Stage 1 response was satisfactory even though many parts of the complaint had not received a response.
60. Members of the public can take private action against alleged nuisances via the Magistrates' Court under section 82 of the Environmental Protection Act. We consider it good practice for a council to make people aware of this, especially where it has decided it cannot act. The Council's environmental health enforcement policy also says it will ensure it directs complainants to suitable information where other legal routes exist by which they could pursue an issue. There was no evidence the Council made Ms X aware of this option, even when she complained about its investigation of the issues. This was fault.

The Human Rights Act

61. We are not satisfied the Council had due regard to Ms X's human rights under The First Protocol, Article 1, which entitles her to peaceful enjoyment of her home and land. It did not properly follow enforcement processes when she reported issues which suggested this right may have been compromised. It did not properly consider the impact its decisions would have on her. This was fault.

Injustice caused to Ms X

62. Our role is to consider whether the Council has followed the right processes and procedures in responding to Ms X's complaints. This means we recommend remedies for avoidable injustice caused by the actions of the Council, or prolonged by the Council's failure to act. We have no power to make findings about the actions of the restaurant.
63. The Council took too long to follow up on the boundary screening it set as a planning condition in 2017. It did not properly consider the powers available to it to pursue this issue. We cannot say, even on the balance of probabilities, whether it would have decided to take any action had it considered this properly, in good time. Therefore, we cannot say this caused Ms X a loss of amenity. However, there remains uncertainty for Ms X about whether she would have been protected from overlooking had the Council acted without fault. This remaining uncertainty caused Ms X distress, for which the Council should provide a remedy. In Ms X's case we have considered events after January 2021. We consider the Council should remedy the distress caused from January 2021 to June 2023, when the Council told us it was still making its enforcement decision. We usually recommend a payment of up to £500 to recognise the distress caused by uncertainty. In this case Ms X had a reasonable expectation the Council would

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- ensure screening was put in place because it continued to tell her it was pursuing this; this is in addition to the uncertainty about whether the Council would take enforcement action. Therefore, we consider a higher payment than normal is due.
64. We found fault with how the Council consulted with its environmental health service on two retrospective planning applications in August 2021. However, it decided to refuse the applications anyway, so we are satisfied this did not change anything for Ms X so did not cause her an injustice.
 65. The Council also delayed its consideration of these two planning applications. These were retrospective applications for works completed without permission which Ms X had told the Council impacted on her amenity. Therefore, the Council's failure to consider these in good time could have prolonged the injustice caused to Ms X. However, in this case we do not consider this short delay significantly changed things for Ms X because the restaurant then appealed to the Planning Inspectorate and this process did not conclude until February 2023.
 66. Based on what the Council told the Planning Inspectorate, it is clear it accepted there was an issue with smells from the kitchen extraction system and veranda. The comments from the Planning Inspectorate about the issues with odour this caused were unambiguous. The Council may have decided these smells constituted a statutory nuisance had it investigated this properly. There remains uncertainty about this. The Council also failed to properly consider and investigate the issues Ms X reported with noise, smells from the bin area, foul water and chemicals, excess waste, and vermin. We cannot say, even on the balance of probabilities, whether it would have decided to take any action had it investigated these issues properly. However, there remains uncertainty for Ms X about whether things may have been different for her had the Council acted without fault. This remaining uncertainty caused Ms X distress, for which the Council should provide a remedy. In Ms X's case we have considered events after January 2021. We consider the Council should remedy the distress caused from March 2021 when she started reporting issues. We usually recommend a payment of up to £500 to recognise the distress caused by uncertainty. In this case we consider a higher payment than normal is due because of the multiple compounding failures by the Council to properly consider and investigate Ms X's reports over a prolonged period.
 67. Had the Council made Ms X aware of her right to take private action against alleged statutory nuisances via the Magistrates' Court, we consider it likely she would have pursued this. We cannot say what outcome the court would have reached had it considered the case. However, there remains uncertainty for Ms X about whether things may have been different for her had the Council directed her to this alternative route. This remaining uncertainty caused Ms X distress, for which the Council should provide a remedy.
 68. The Council's failure to properly communicate with Ms X or respond in full to her complaint, caused her avoidable confusion, distress, and frustration. It should act to remedy this injustice.
 69. The Council's failure to consider Ms X's case via its complaints procedure sooner caused her avoidable time and trouble. The Council should provide a remedy for this.
 70. In considering the injustice caused to Ms X by the Council's faults, and deciding a suitable remedy, we took into account that it did not have due regard for her human rights.

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71. The issues reported by Ms X are still ongoing. We have recommended the Council remedies the injustice caused to Ms X up to the point we issue our decision. Once the Council has issued its outstanding enforcement decisions, Ms X can make a new complaint to ask us to consider any outstanding unremedied injustice for the period she was waiting for these decisions.

Conclusions

72. We found the Council was at fault because it failed to properly:
- consider the powers available to it to enforce the boundary screening it set as a planning condition in 2017, in good time;
 - consider in good time the retrospective planning applications made in 2021;
 - consider the various nuisances Ms X reported via its environmental health enforcement and statutory nuisance procedures;
 - communicate with Ms X or respond properly to her complaint; and
 - have due regard to Ms X's human rights under The First Protocol, Article 1, which entitles her to peaceful enjoyment of her home and land.
73. Our view is the Council's fault caused Ms X avoidable distress, and time and trouble. We also consider there remains uncertainty for Ms X about how things may have been different for her had the Council acted without fault, and this uncertainty caused her distress.

Recommendations

74. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended)
75. In addition to the requirements set out above the Council has agreed to take the following actions to remedy the injustice identified in this report.
76. Within one month of the date of this report, the Council will:
- apologise to Ms X for the faults identified and the impact those faults had on her;
 - create an action plan to investigate all outstanding planning, environmental health, and licensing issues without delay, and decide if the Council should take any enforcement action. It should share a copy of this action plan with us;
 - assign a single point of contact for Ms X. They should meet with Ms X to discuss her concerns and:
 - explain the procedures the Council will follow to investigate the issues;
 - agree how often it will keep Ms X updated of progress; and
 - ask Ms X when the reported issues are at their worst. It should then properly consider what days and times it should visit Ms X (without notice to the restaurant) to monitor the issues, and how often.
 - pay Ms X a total of £3,450, comprising of:

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- £2,000 to recognise the distress caused to her by the uncertainty that remains about how things may have been different had the Council acted without fault in response to the various issues she reported;
 - £750 to recognise the distress caused by the uncertainty that remains about how things may have been different had the Council properly considered the powers available to it to enforce planning conditions, in good time;
 - £600 to recognise the avoidable distress, frustration, and confusion caused by its failure to communicate with her properly and respond to all the concerns she raised; and
 - £100 to recognise the avoidable time and trouble caused to her by the Council's failure to properly consider her concerns via its complaints process sooner.
- write to any other residents who made similar complaints or alleged nuisance reports about the restaurant from 2021 onwards, explaining we identified fault with how it investigated complaints about the restaurant. It should invite them to complain via the Council's complaints procedure within three months if they wish to do so. For any complaints received, the Council should properly investigate and remedy any injustice in line with our findings in this case, adjusting as appropriate based on the injustice compared to that experienced by Ms X. It should direct any other complainants to the Ombudsman if they are not satisfied with its complaint response.
77. Within three months of the date of this report, the Council will:
- review its arrangements for collaborative working between its environmental health, licensing, and planning teams and ensure a clear process is in place for environmental health consultation on planning applications;
 - review its environmental health enforcement and statutory nuisance policies, in consultation with the planning team where needed, to address the faults we have identified. In carrying out this review it should ensure the new policy sets out:
 - a clear process, with timescales, for investigation of all statutory nuisances (not just noise), and licensing breaches;
 - how the Council will consider how often and at what days/ times it should visit to monitor reported issues;
 - expectations for regular communication with complainants including clearly communicating investigation outcomes in writing;
 - the threshold at which the Council will refer repeated nuisance complainants to its complaints procedure;
 - the threshold at which the Council will make complainants aware of their right to take private action against an alleged nuisance via the Magistrates' Court under section 82 of the Environmental Protection Act 1990; and
 - how the Council will keep records of its considerations and decision making.
 - issue reminders to relevant staff involved in the Council's corporate complaints procedure about the importance of properly responding to all issues raised by a complainant; and
 - share a copy of our final report with:

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- all relevant staff across environmental health, licensing, and planning teams; and
 - a committee with responsibility for the relevant issues, to reflect on the lessons learned.

Decision

78. We have completed our investigation into this complaint. There was fault by the Council which caused Ms X avoidable distress, and time and trouble. The Council agreed to remedy this injustice and properly consider without delay whether it should take planning or environmental health enforcement action about any of Ms X's concerns. It will also write to others who may have been affected, review relevant policies and procedures, and issue reminders and share our report to relevant staff.