

Complaint reference:
13 001 173

Complaint against:
Medway Council

The Ombudsman's final decision

Summary: Mr X says the Council has failed to cut back and manage trees next to his home. I have completed the investigation because there is no evidence of significant fault by the Council.

The complaint

1. Mr X says the Council has failed to cut back and manage tall trees on Council land adjacent to his home. Mr X says the trees block out sunlight to his garden and cause heavy leaf fall. Mr X refers to events prior to 1998 when the trees were planted.

What I have investigated

2. I have investigated what took place during the 12 month period prior to Mr X's complaint to the Ombudsman.

The Ombudsman's role and powers

3. The Ombudsman cannot normally investigate late complaints unless she decides there are good reasons. Late complaints are when someone takes more than 12 months to complain to the Ombudsman about something a council has done. *(Local Government Act 1974, sections 26B and 34D)*
4. The Ombudsman investigates complaints of injustice caused by maladministration or service failure. I have used the word fault to refer to these. The Ombudsman 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))*
5. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. *(Local Government Act 1974, section 30 (1B) and 34H(i))*

How I considered this complaint

6. I have considered the information provided by Mr X. I have asked the Council questions and carefully examined its response and supporting papers.
7. Mr X and the Council have seen my provisional view. I have looked at Mr X's comments and papers in response to my view.

What I found

What happened

8. On 16 April 2012 Mr X wrote to the Council that trees on its land were causing problems. The heavy leaf fall blocked his guttering and saplings were growing in his garden. He was also concerned about a large tree near his garden wall. He asked the Council to consider removing the trees. On 3 May the Council's Tree Officer called Mr X and explained he was dealing with the case. The Council decided to prune dead and decaying branches and to poison seedlings. The works were scheduled to take place in 2012. At the end of May Mr X told the Council he was not happy with its planned works and asked for written confirmation.
9. On 13 June the Tree Officer wrote to Mr X and sent him a copy of the Council's Tree Management Policy. He explained the Council does not cut back or remove trees because of loss of light or heavy leaf fall. He confirmed the Council would prune the tree nearest to Mr X's property and poison seedlings within the following six weeks. The trees were generally in good health and would not be felled.
10. Mr X contacted the Council at the end of June asking why the trees had been planted close to his property. The Council responded in July and said it would consider any evidence of subsidence caused by the trees. If the trees were shown to be the probable cause the Council would take action to prune or remove. However the Council would not cut back a tree because of a "perceived threat of subsidence". Mr X asked the Council again about why the trees had been planted near his home. The Council responded the works were done before the formation of the Council in 1998. It could not answer questions about when the trees were planted or provide plans. The Council said it was reviewing all of its "tree stock" and mapping the positions, this work would be complete within two years.
11. In September Mr X asked the Council again for details of number and types of trees planted near his home. He chased up the Council for a response in November. The Council told Mr X it did not have the resources to survey the trees near his home at present. It reiterated that a District wide tree survey was underway but this would take two years to complete. It also sent Mr X information about subsidence and its various causes.
12. In December Mr X contacted a Councillor. Mr X said the Council was planting trees without considering the impact on residents. In January 2013 the Councillor referred Mr X's letter to the Senior Management Team. Later in January the Council told the Councillor there were large volumes of papers to go through but so far the evidence showed the Council had acted correctly.
13. In February the Senior Management Team provided its findings to the Councillor. Later that month it also informed Mr X. The Council had visited the site and found the trees nearest to Mr X's home did not directly abut the property. The trees were healthy and no pruning was needed.
14. In March and April Mr X pursued a complaint with the Council about its decision not to fell the trees. The Council reiterated its policies and that no further action was needed.

What should have happened

15. The Council has a Tree Management Policy which sets out the Council will prune or remove a tree on its land if it is dead/ dying or dangerous. Pruning work on healthy trees should not be severe enough to damage the health of the tree.
16. The policy also says there is no natural right to light under the law. In view of this the Council does not prune or remove trees because a complaint is made about loss of light.
17. In addition the policy deals with complaints about leaf fall and seedlings. The Council acknowledges that these issues can be inconvenient for residents but are not grounds to fell or prune trees.
18. The Council will consider tree removal in cases where it is shown a tree is causing structural damage. In such instances the resident should provide the Council with evidence from suitably qualified professional. The resident can also make a claim against the Council for damage caused by subsidence.

Was there fault by the Council

19. The Council delayed responding to Mr X's letter received in September. It sent a reply after Mr X chased up the officer.
20. I have not found evidence of any other fault by the Council. It has correctly followed its policy on tree management when dealing with Mr X's case.
21. Mr X disagrees with the Council's decision not to fell or prune trees near his home. However there is no duty on the Council to do what Mr X would like. The Council will only remove trees if they are damaged or proven to be causing a structural defect. In this case Mr X has not provided any evidence to the Council to show his property has been subject to subsidence. The Council has checked the trees and they are in good health and do not need any further work.
22. There is also no obligation on the Council to count and detail the trees near Mr X's home. The Council has limited resources and is entitled to refuse Mr X's request. The Council will have a District wide map of trees on Council land within the next two years.
23. The Council has explained its position to Mr X and also provided him with information about tree management and subsidence. My view is the Council has done all it can and no further action is needed.
24. Mr X says the Council should comment on events before 1998 because the same officer has dealt with trees for over 15 years. I have not found fault by the Council as it has correctly explained the trees were planted before the Council came into effect.

Did the fault cause an injustice

25. Mr X had to wait longer than is acceptable for a reply to his letter in 2012. I will flag this up to the Council. However I do not see this caused Mr X a significant injustice.

Final decision

26. I have completed the investigation because the Council has considered Mr X's complaint about trees in line with its policy.

What I have not investigated

27. I have not investigated events prior to 2012. Mr X also refers to damage to his home by the trees and this is an issue he can pursue by making a claim against the Council.

Investigator's decision on behalf of the Ombudsman