

## **The Ombudsman's final decision**

Summary: Ms X complained the Council failed to install a dropped kerb. Ms X uses a wheelchair and says she cannot safely cross the road outside her home. The Council applied its criteria but failed to consider Ms X's additional requirements as someone who uses a wheelchair. The Council offered to meet Ms X to understand the issues she faces. The Council agreed to use the information gathered on this visit to review its decision.

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## **The complaint**

1. Ms X complained the Council failed to install a dropped kerb in her local area. There is a dropped kerb on one side of the road, but not on the opposite side of the road. As a wheelchair user, Ms X cannot cross the road and use the pavement. She is forced into the road, putting her life at risk. Ms X would like the Council to install a dropped kerb.

## **The Ombudsman's role and powers**

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word fault to refer to these. 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*)
3. If we are satisfied with an organisation'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**

4. As part of the investigation I have considered the following:
  - The complaint and the documents provided by the complainant.
  - Documents provided by the Council and its comments in response to my enquiries.
  - The Highways Act 1980, information on the Councils website about making a new highways request, the Councils Local Transport Plan and Evidence Base.
5. Ms X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

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## What I found

### Relevant legislation

#### The Highways Act 1980

6. Section 41 of the Highways Act 1980 requires a highway authority to maintain and repair all its highways that are maintainable at public expense. It does not state to what standard.

#### The Equality Act 2010

7. The Equality Act 2010 provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It offers protection, in employment, education, the provision of goods and services, housing, transport and the carrying out of public functions.
8. The Equality Act makes it unlawful for organisations carrying out public functions to discriminate on any of the nine protected characteristics listed in the Equality Act 2010. They must also have regard to the general duties aimed at eliminating discrimination under the Public Sector Equality Duty.
9. The 'protected characteristics' referred to in the Act are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
10. The Public Sector Equality Duty requires all local authorities (and bodies acting on their behalf) to have due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
  - advance equality of opportunity between people who share a protected characteristic and those who do not; and
  - foster good relations between people who share a protected characteristic and those who do not.
11. The broad purpose of the Public Sector Equality Duty is to consider equality and good relations into the day-to-day business and decision making of public authorities. It requires equality considerations to be reflected into the design of policies and the delivery of services, including internal policies, and for these issues to be kept under review.

#### The Council's policies and procedures

12. The Council considers requests for dropped kerbs under two programmes, the integrated transport block capital programme and the traffic management revenue programme.
13. When the Council receives a request for highway improvements, officers carry out a desktop inspection of the area using Google Streetview, they do not visit the site.
14. A Cabinet Member for Transport and Environment considers and decides requests under both programmes.

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### **Integrated transport block capital programme**

15. The Council's integrated transport block capital programme is a programme to deliver highway improvements that deliver the strategic objectives set out in the County Council's Local Transport Plan (LTP). The LTP is online.
16. Requests for dropped kerbs under this scheme are in areas located on or leading to / close to primary pedestrian routes. Section 14 of the LTP evidence base (also available online) details the primary pedestrian routes.

### **Traffic management revenue programme**

17. The Council's traffic management revenue programme is a programme to deliver local small-scale non-strategic highway improvements such as lining schemes, signing improvements, and other minor improvements, such as dropped kerbs, handrails, or bollards.
18. The Council considers requests to install new dropped kerbs under this programme for routes not on or directly leading to / close to the primary pedestrian routes detailed in section 14 of the LTP evidence base.
19. The Council does not have formal guidance but has developed a criterion. The Council will check the location of the proposed dropped kerb to see if it is on a main route to key destinations, for example schools, town centre facilities, public transport hubs, employment sites or health care facilities.
20. The Council will also consider the potential use of the facility.

### **What happened**

21. I have summarised below the key events; this is not intended to be a detailed account.
22. Ms X uses a wheelchair. She says the road where she lives does not have matching dropped kerbs to allow her to safely cross the road. Ms X said she can be in the road a couple of minutes before reaching a dropped kerb on the opposite side of the road. She says the road can be busy and she feels in danger.
23. Ms X asked the Council to install a dropped kerb near her property so she can cross the road safely.
24. The Council wrote to Ms X in March 2020. The letter referred to Ms X's enquiry for a dropped kerb so she 'can cross safely in her wheelchair'. It said it nominated the location for a dropped kerb but could not guarantee it would be included in the plan for the next financial year.
25. In November 2022, the Council wrote again to Ms X and said it had added the location to the list for consideration but '...was considered low priority due to it not providing any strategic benefit and therefore was not included in the final 21/22 programme.' It explained funding is not available to complete all requests and '...dropped crossings are reserved for areas with high pedestrian footfall to justify the cost of them.' The letter did not refer to Ms X using a wheelchair and how the Council had considered this before it made the decision.
26. Ms X complained to the Council in December 2022. In its response it explained the Council prioritises locations which offer the greatest benefit to most people. It prioritises locations that improve access to local shops and services where there is relatively high use. The letter does not refer to Ms X using a wheelchair and how the Council considered this before making the decision. It did not uphold Ms X's complaint.

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27. Ms X complained to the Ombudsman in January 2023. She said the lack of matching dropped kerbs affects her ability to go to the local shops and services and meet with friends. In conversation with me she said she feels trapped in her home and puts her life at risk when she goes out. She said the Council said her request is a 'low priority', Ms X said for someone using a wheelchair it is a high priority and was upset by this.
  28. In response to my enquiries, the Council explained how it considered Ms X's request. It first considered the location under its integrated transport block capital programme. It checked section 14 of the LPT evidence base, the location was not a primary pedestrian route, it could not consider the request on this programme.
  29. The Council considered the location under the traffic management revenue programme. It completed a desk top survey of the location and used Google Streetview to assess the detailed layout of the road. Officers did not visit the site in response to Ms X's request but had visited the area for other enquiries so were aware of the general layout and character.
  30. The Council said the location does not lie on a main route to a school, town centre facilities, public transport hub, employment site, and/or health care facilities. It said it considered the presence of alternative routes for wheelchair users and noted matching dropped kerbs (to provide vehicular access to properties) to enable crossing without the need to travel along the road. It considered the location a 'low priority' for inclusion in the traffic management programme.
  31. In response to my enquires, the Council said Officers from its highway's liaison team will arrange a site visit to speak with Ms X and understand her issues.
  32. The Council has not installed the dropped kerb. It is on the list for inclusion in a future financial year's programme but is not on the 2023/2024 list.

### **Analysis**

33. The Council first considered Ms X's request under the integrated transport block capital programme. As the area was not on or leading to / close to primary pedestrian routes outlined in section 14 of the LTP evidence base, the Council said the location was not suitable for consideration. The Council properly applied the criteria in the LTP. It is not at fault.
34. The Council then considered the location under its traffic management revenue programme, applied the criteria and determined the location was a 'low priority'. The Council applied its criteria correctly and is not at fault.
35. Due to the large number of requests for highway improvements, the Council does not routinely visit locations. Instead, it does a desk top survey. In Ms X's case, officers conducted a desk top survey and used Google Streetview to understand the area, as they do for all cases. Officers did not visit the location specifically about Ms X's request but were familiar with the area as it had visited on other matters. The Council applied the same process to Ms X's request as it does all requests and officers had a better understanding as they had attended the site. The Council is not at fault for the way it considered Ms X's request.
36. The Council has a limited budget to fund small-scale non-strategic highway improvements and receives many requests each year. It cannot complete every request and prioritises cases that benefit more people. The Council considered the criteria under both policies. It is not at fault.

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37. From the evidence I have seen, the Council handled this case the same as any request for a dropped kerb and evaluated the request using a desk top survey. Ms X does not feel the Council considered her request from the view of a disabled person and is upset an officer did not visit the site. The Council knows Ms X uses a wheelchair as it referenced this in its letter dated March 2020. It did not reference Ms X's wheelchair or explain how it considered Ms X's disability in any of its decision-making letters. It appears the Council applied the same consideration for Ms X's request as it would any request for a dropped kerb. It did not consider whether it should make any Reasonable Adjustments for her as a wheelchair user and did not consider whether it was harder for her to access the pavement than a non-disabled person. This is fault.
38. In response to my enquiries the Council said it considered alternative routes for wheelchair users. This is not apparent from the correspondence between the Council and Ms X which led her to feel the Council did not understand the matter from a disabled persons point of view. This is fault.
39. In response to my enquiries, the Council offered a member of its highways liaison team to visit the site to discuss the issues faced by Ms X. This will provide an opportunity to understand Ms X's situation and concerns.
40. I consider some of the Council's wording to be insensitive. The Council's letter to Ms X dated November 2022 said her request was 'low priority'. In my conversation with Ms X, she said she was upset by this wording. I do not consider the Council intended to upset Ms X but have unintentionally done so. The Council could have used more suitable and sensitive wording in its correspondence with Ms X.

### **Agreed action**

41. Besides the actions the Council has identified, the Council agreed to:
- consider the information it gathers when it visits Ms X to review its original decision; and
  - apologise to Ms X in writing and make a payment of £200 for the distress caused by its failure to demonstrate it considered Ms X's disability in its decision making and correspondence.

The Council should complete these actions within four weeks of my final decision and provide evidence to show it has done so.

### **Final decision**

42. I have completed my investigation. While the Council applied correct criteria it failed to consider Ms X's additional needs as a wheelchair user.

### **Investigator's decision on behalf of the Ombudsman**