

Item 7 – Appendix 1 – Ombudsman’s Report on UGS Market

Dear Brighton and Hove City Council

Complaint

Thank you for your letter and for the subsequent emails and information.

I enclose a copy of my letters to X explaining my initial view and final decision.

Yours sincerely

Investigator

Enc:

The Commission will include this complaint in the published figures for the year ending 31 March 2009. We will record the category as: Other and the decision as: No or insufficient evidence of maladministration (without report).

May 2008

Dear X

I write further to my letter which explained my initial view about your complaint. I have considered the additional information that you sent, including the photographs and video, and I have contacted the Council for some further information.

However, I remain of the view that there has been no maladministration by the Council.

I asked the Council about the issue of traders placing notices on cars asking people not to park (as shown on the photographs). The Council checked with Parking, the Licensing department and the Police and it appears that the placing of such notices is not an offence. However, I have been informed that Police Community Support Officers will keep an eye on the situation in case there is an escalation in this activity which causes a problem.

The fact that the Council has not taken action against the placing of these notices is not maladministration because it does not seem to be an offence.

I can also confirm that the traders should wear ID badges and, if they do not, then enforcement action could be taken. However, as I explained in my previous letter, the Council will only take enforcement action if it thinks it is appropriate to do so; this is in line with its enforcement policy.

I also asked the Council whether details about the pitches could be put on the website. The Head of Environmental Health and Licensing considered your request but does not think it is necessary. The Council has its own records to monitor the market and it does not feel it is necessary to put any further information on the website. This is a view that the Council is entitled to take and does not represent maladministration.

You have also commented that before a test was arranged for access for Emergency Vehicles the traders were given advance notice. You think the test gave artificial results. However, whilst this may be true I think it is likely that the Emergency Services would have raised this as an issue with the Council if they had any serious concerns.

Finally you asked for the residents of Upper Gardner Street market to be consulted about future changes to the market. However, the evidence shows that residents and the North Laines Community Association have been consulted in the past so it is likely that they would be consulted again about future plans.

I appreciate that you do not think the market is well run and you have concerns about parking and the behaviour of the traders. However, I think it is important to stress again that this is not a Council run market but a group of traders who have consent to trade. And, despite your concerns, I think the Council is taking appropriate action to monitor the traders. Also, as I explained in my previous letter, a more rigorous inspection routine will be implemented over the next few months.

For these reasons, and for those explained in my previous letter, I have now discontinued my investigation and closed your complaint on the grounds that there has been no maladministration by the Council.

As required by the 1974 local Government Act, I have sent a copy of my letters to the Council's Chief Executive.

If you want any papers returned to you please let me know as soon as possible. Our normal policy is to destroy files 14 months after we have closed the complaint.

Yours sincerely

Investigator

23 April 2008

Complaint against Brighton and Hove City Council

As you are aware, I wrote to the Council to make enquires about your complaint. I enclose a copy of the reply.

This letter explains my initial view about your complaint and invites you to comment before I make my final decision.

Initial view

My understanding of your complaint was explained in the letter which I sent to the Council; you have already been sent a copy of that letter.

My initial view is that there has been no maladministration (administrative error) by the Council which has caused you an injustice.

How I reached my initial view

The Local Government Act 1974 says that the Ombudsman may investigate complaints of injustice caused by maladministration by the Council. I am sorry to tell you that the evidence I have seen so far satisfies me that there has been no maladministration by the Council in relation to the matters you have complained about.

You complained about a number of issues relating to Upper Gardner Street market; the full summary of your complaint was explained in the letter which I sent to the Council. However, the main elements of the complaint were that the market is badly managed, the traders behave inappropriately towards local residents and the Council has shown bias to the traders by allowing an informal parking policy to continue. You feel that parking is a problem for residents when the market is operating, and you think the present arrangements cause access problems for the Emergency Services.

Having read the information from the Council I am satisfied that the market is properly managed. I think it is also important to stress that this is not a market which is formally managed by the Council but a group of traders who are allowed to trade, subject to certain conditions. It is apparent that there are random and regular inspections involving the licensing department, the police and the highways department. During inspections the consents and pitch occupancies are checked and advice issued if any problems are noted. Also, a more pro-active inspection system is due to be implemented over the next few months and this will include Upper Gardner Street.

The Council accepts that displaying books on windscreens, as shown in your in photographs, may breach a condition of the trading consent. However, a breach would need to be witnessed by an officer and the Council would have to decide if it was appropriate to take enforcement action. Under the terms of the Enforcement Policy the Council has a range of available options if a breach is identified; options range from taking no action to deciding to prosecute. If the Council decides not to take enforcement action then this does not constitute maladministration because it is a valid option under the Enforcement Policy. The role of the Ombudsman is to check that a Council is following its policies and procedures; however, it is not for the Ombudsman to question the merits of a decision taken under that policy.

You also complained that the traders are aggressive and behave poorly towards you and other residents. I have no reason to disbelieve what you have told me, but there are no records of other residents complaining about this. Given that the licensing department works with the police, and the police are consulted over new applications, then I think the Council would have been alerted if residents were regularly reporting aggressive or inappropriate behaviour by the traders. There are also regular liaison meetings between a range of organisations and, again, I think it is likely that if the traders were causing problems then it would have become apparent during these meetings.

You also told me that the market causes parking problems. I can understand that on Saturdays it probably is more difficult to park, especially as the parking restrictions are only in force from 4pm to 8pm each Saturday. The Council accepts that this is an informal arrangement which resulted from a recent change in parking rules in central Brighton. The Council is aware that changes in Upper Gardner Street might be necessary but, for the time being, it has decided to continue to monitor the informal arrangements. This does not seem to me to be unreasonable and I note that no other residents have complained about parking whilst the market is operating. The Emergency Services have also not raised any concerns which I am sure they would have done if they felt there were serious access problems.

I do not see any evidence of bias; the market exists and the Council has to balance the interests and needs of the traders, with those of local residents. The Council is continuing to monitor the situation and has considered alternative options, and I think this is a fair compromise.

Next steps

Overall, I have not identified any administrative error in the management of Upper Gardner Street market. I understand that you are unhappy with the market, and you feel that it causes you problems, but this does not mean that there is fault by the Council.

I would like to stress that this is not my final decision. This is, however, an opportunity for you to comment on my initial view and on the letter from the Council. If you have any new information or comments that you would like me to take into account, then please send them to me within three weeks of the date of this letter. If you need longer to reply, please let me know.

If I do not hear from you within this time, then it is likely that this letter will stand as my decision. I shall discontinue my investigation and close your complaint. Also, as the 1974 Act requires the Ombudsman to inform the Council of the decision on your complaint, I will then write to let the Council's Chief Executive know the outcome.

There is no formal right of appeal against our decisions so it is important that you say now anything that you want me to consider.

Yours sincerely

Investigator

