



Section A

Commercial

A1

Licence

4

A1: Licence

Lay-by trading – applicant misled

Mr Lacey complained about a council's handling of a licence to sell refreshments in a lay-by.

What happened

1. The lay-by was one of two on a main road close to a motorway junction. Mr Lacey submitted a tender to the council for consent to sell refreshments in the lay-by.
2. He said that prior to and on awarding him the consent the council led him to believe that he would be the only person permitted to trade in the lay-by. But the council later allowed operators who had previously occupied the sites to resume trading. Mr Lacey said that in these circumstances he was unable to continue his business and was caused unnecessary financial hardship, anxiety and distress as a result.

Errors

3. The Ombudsman found that each of the lay-bys had been occupied by other traders for a number of years without the fees for the sites being reviewed. Under the relevant law, a council could grant a consent for a period not exceeding 12 months. The Ombudsman saw no evidence that the consents, in this case, were properly reviewed annually. That failure was maladministration.
4. The council invited tenders in order to determine an appropriate fee for a consent to trade in the lay-bys. But it did not explain its purpose to the applicants and it did not tell them that the sites might be shared. That also was maladministration.

5. The council determined that consents should be granted to Mr Lacey and another applicant as they had made the highest bids. The council did not immediately inform the existing traders. When in due course they found out they protested and the council restored their consents.

Injustice

6. Mr Lacey was aware that a single trader had operated in the lay-by for a number of years and was given no indication during the tendering process that this would change. When the council wrote to offer him a consent to trade in one of the lay-bys, it told him that the existing trader would be asked to leave. Mr Lacey reasonably expected that he would be the sole trader. He sold his existing business in order to undertake the trading in the lay-by. But the council's later decision that he should share a lay-by with one of the established traders put him at a significant disadvantage, and could not satisfy his reasonable expectation that he would be able to run a successful business from the site. He ceased operations there.
7. The Ombudsman concluded that, but for the council's maladministration, Mr Lacey would not have sold his business elsewhere.

Outcome

8. The council agreed to the Ombudsman's suggestion that it should arrange an independent valuation of the business losses sustained by Mr Lacey and reimburse him accordingly. The council also agreed to refund his application fees and legal and other expenses.

9. The council also agreed to undertake a review of its policy and practice in respect of consents for street trading and, particularly, to ensure that it had clear and appropriate procedures for determining fees and that consents would be properly readvertised at the end of the statutory maximum period.

(Report 03/B/8322)