

**Case 200503539: West Lothian Council**

**Summary of Investigation**

***Category***

Local government: Roads and transport; traffic regulation and management

***Overview***

The complainant (Mr C) claimed that West Lothian Council (the Council) failed to conduct the required consultation before installing traffic calming measures in his neighbourhood and that the Council failed to warn him of the aftermath of their installation as he reported that they were causing noise and vibration from traffic.

***Specific complaint and conclusion***

The complaint which has been investigated is that the installation of traffic calming measures took place after inadequate consultation with local residents and without warning of the possible consequences (*not upheld*).

***Redress and recommendations***

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 16 March 2006 the Ombudsman received a complaint from a member of the public (Mr C), a spokesperson for a group of residents, against West Lothian Council (the Council). Mr C claimed that the Council failed to conduct the required consultation before installing traffic calming measures in his neighbourhood and that they failed to warn him of the aftermath of their installation as he reported that they were causing noise and vibration from traffic.

2. The complaint from Mr C which I have investigated is that the installation of traffic calming measures took place after inadequate consultation with local residents and without warning of the possible consequences.

### **Investigation**

3. It is important to make clear at the outset that it has not been my role to assess or challenge the quality of road engineering and traffic research or assessment used to determine what traffic calming measures were used, the professional and technical judgement of Council officers, or the installation and performance of the traffic calming measures or any alleged environmental impact, but to judge whether the Council fulfilled their duties and responsibilities in a reasonable manner.

4. As well as correspondence from Mr C and responses to my enquiries of the Council, I have also considered relevant legislation and government guidance. These are listed in Annex 3 to this report.

5. Section 7(1) of the Scottish Public Services Ombudsman Act 2002 states that:

'The Ombudsman is not entitled to question the merits of a decision taken without maladministration by or on behalf of a listed authority in the exercise of a discretion vested in that authority.'

6. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

**Complaint: The installation of traffic calming measures took place after inadequate consultation with local residents and without warning of the possible consequences**

7. In 2004 the Council were pursuing an initiative to improve road safety at primary and secondary schools throughout West Lothian. As part of this, streets outside all schools within West Lothian were to be covered by a permanent or part-time 20 miles per hour (MPH) speed limit. The Council reached an agreement with Lothian and Borders Police that streets with the 20 MPH speed limit would have to be self-enforcing. The Council reached the view that in some areas, including Mr C's neighbourhood, traffic calming measures would achieve this.

8. In April 2005 the Council installed traffic calming measures, specifically speed cushions (also known as road humps) in five streets in Mr C's neighbourhood. On 28 June 2005 Mr C met with Council's Chief Executive and Highways and Transportation Manager to submit a petition of 79 signatures from the same number of households in the neighbourhood. There is no formal note of the meeting. Mr C was one of the petitioners and was a spokesperson for them. The petition stated that the residents had the quality of their lives damaged by the speed cushions because of the noise of heavy trucks or lorries passing over them, and that they wanted them removed. The Chief Executive wrote to Mr C on 4 July 2005 as a follow-up to their meeting on 28 June 2005. He said that as agreed at the meeting, the Highways and Transportation Manager would make arrangements for traffic and noise surveys to be undertaken in the area and that Mr C would be advised of the results. Mr C wrote to the Chief Executive on 12 October 2005 to say that one of the petitioners had seen a survey being conducted in September 2005 and he asked when he could be informed of the results, noting that the noise was still audible.

9. The Chief Executive responded to Mr C on 1 November 2005 and advised that on 24 August 2005 and 16 September 2005 noise surveys were carried out in two different locations in the neighbourhood where different sizes of speed cushions had been installed, and also on a stretch of road without speed cushions. The Chief Executive outlined the methodology employed and said that:

'In general terms, traffic noise is not continuous ... The [neighbourhood] surveys showed that, in overall terms, there is a reduction in the average maximum noise level in the areas where speed cushions have been

installed compared with areas without speed cushions. This is because the majority of traffic slows down before going over speed cushions. The findings are consistent with similar surveys carried out elsewhere.'

He also said that in relation to:

'... noise specifically associated with heavy goods vehicles (HGVs) ... The survey showed there is little difference in the maximum noise level measured adjacent to a speed cushion and on the stretch of road where there is no speed cushion. It should be noted, however, that only a small number of HGVs used the road on the survey days.'

He went on to list the numbers of vehicles recorded during peak periods when a traffic count was carried out on 25 October 2006. The peak periods were 08:00 to 09:00 and 16:00 to 17:00. He explained that the other factors being taken into account included the fact that road traffic noise was excluded from the definition of statutory nuisance under the Environmental Protection Act 1990, and advised that the Council's Transportation Projects Manager would contact local businesses and ask them not to route HGVs through Mr C's neighbourhood and the Head of Operational Services had already instructed vehicles servicing the Council's civic amenity site not to use the main road through the neighbourhood. The Chief Executive concluded that, on the basis of the information he had outlined, his view was that it was in the public interest for the speed cushions to remain.

10. Mr C wrote to the Chief Executive on 25 November 2005 disputing the behaviour of drivers and how vehicles used the area, the Council's choice of afternoon peak time, and the type and frequency of the noise generated by vehicles passing over the speed cushions. He also said that the issue of air pollution had been overlooked, and questioned how the Council had conducted the noise surveys:

'... it is understandable that you should conclude there is little difference in the noise levels measured as the deafening bangs and crashes experienced are instantaneous and fleeting occurrences which would not last for 10% of the measurement period and hence not recorded.'

He also disputed the Chief Executive's statements on the statutory consultation, as he said the letter of 6 September 2004:

'... did not warn the recipients their lives would be blighted as a result of these humps being installed.'

11. The Chief Executive wrote to Mr C on 18 January 2006 and responded to the points Mr C made in his 25 November 2005 letter. Referring to the November letter, the Chief Executive said:

'As you correctly state, there are alternative methods of traffic calming. However, the only effective measure to reduce speeds in a street with the characteristics of [the main road through the neighbourhood] is to introduce vertical features. This is because, with relatively light traffic flows, drivers will be able to weave through horizontal features (chicanes) at speed if not opposed by oncoming traffic.'

The Chief Executive again concluded that he was still of the opinion that the speed cushions should remain. The Chief Executive wrote again to Mr C on 6 February 2006 with the results of a traffic survey carried out on 24 January 2006 with the intention of clarifying when the peak periods were. The survey confirmed that the afternoon peak period was as chosen by the Council and not as Mr C believed.

12. Mr C responded to the Chief Executive on 14 February 2006 and said:

'I would suggest it is abundantly clear that the petition lodged with you on 28 June 2005 related to the deafening noise generated by certain vehicles as they traverse the speed humps, which at times can be so severe as to cause vibration in houses. The problem is not confined to HGVs but as described in my letter of 25 November 2005, emanates from a variety of different vehicles.'

Mr C disputed the type of noise surveys carried out by the Council and dismissed them as irrelevant, and accused the Chief Executive of sending responses as 'an exercise in obfuscation'.

13. In his complaint to the Ombudsman Mr C said:

'The residents of the estate are familiar with the problems caused by such traffic negotiating the narrow streets and as HGVs continue to get larger their impact is progressively felt more ... [the Council] installed speed bumps in all of the thoroughfares considered to be conveying 'through traffic' in the estate in response to a perceived speeding/accident problem.'

Mr C claimed that the consultation was not sent to enough local residents and that:

'... contrary to the recommendation contained in [the Department for Transport] Traffic Advisory Leaflet 10/00, no mention was made to resultant traffic noise or ground-borne vibrations.'

Mr C also referred to an internal Council document, *Noise Impact Assessment New Speedbumps* drafted by a Senior Environmental Health Officer after the August and September 2005 noise surveys. He criticised the wording of this document and said that it:

'... clearly reveals the woolly and contradictory thinking behind the Council's approach to the analysis ... the conclusion contains as many contradictions as to be nonsensical.'

Mr C also accused the Council of prejudice against his neighbourhood, saying that a nearby area had traffic calming measures changed as it was 'private' housing, whereas his neighbourhood was '... still perceived as a 'Council' estate notwithstanding that many properties are now owner-occupied'. Mr C also wrote to me on 30 September 2007 and expressed his concern about:

'... the inexorable increase in the volume and the size of vehicles. It is becoming more common now for large HGVs to be towing trailers which doubles their lengths and thus compounds the problem.'

14. In response to my enquiries, the Chief Executive confirmed that the Council consultation had been carried out in accordance with the relevant legislation, in this case The Roads (Traffic Calming) (Scotland) Regulations 1994, The Road Humps (Scotland) Regulations 1998 and The Road Humps and Traffic Calming (Scotland) Amendment Regulations 1999. He also provided a copy of the Council's procedure for traffic calming/road hump schemes, copies of letters sent to statutory consultees and the notice used as a newspaper advertisement and street bill attached to lampposts in the area, as well as the checklist used during the period of the advertisement to ensure that the street bills were maintained. The notice stated that the road hump scheme was for 'various road humps outside secondary schools' and that the Council:

'... in exercise of their powers under Section 36 of the Roads (Scotland) Act 1984, as amended, propose to install speed cushions on the lengths of roads specified in the schedule below ...'

The notice explained what the speed cushions were, detailing their design and dimensions and how they would be fitted to the road, as well as providing a schedule of the locations at which they would be fitted. The notice also stated,

in bold text, when and where '... drawings showing full particulars of the scheme' would be available for inspection, and that 'Any person wishing to object to the proposed scheme should send details of the objection, in writing ...' to the Council's Chief Solicitor by the deadline listed.

15. In terms of the residents consulted in the 6 September 2004 letter, the Chief Executive informed me that they:

'... were chosen as they were deemed to be directly affected by the proposed road humps ... Mr C was not consulted at this stage as it was deemed that his property would not be adversely affected by the installation of the speed cushions due to the orientation, distance and height of his property from the existing road. However, he did have the opportunity to object during the statutory advertisement period ...'

I was provided with copies of objectors' correspondence and the Council's responses to them.

16. The Chief Executive also outlined the research papers that Council staff had referred to, which were Department for Transport Traffic Advisory Leaflets *04/94 Speed Cushions*, *04/96 Traffic Management and Emissions*, *06/96 Traffic Calming: traffic and vehicle noise*, *08/96 Road Humps and ground-borne vibrations*, and *01/98 Speed cushion schemes*. He also advised that Traffic Advisory Leaflet *10/00 Road humps: discomfort, noise, and ground-borne vibration*, referred to by Mr C, concerned trials of full-width road humps and not speed cushions and, therefore, a direct comparison could not be taken with the measures introduced in Mr C's neighbourhood. In relation to air pollution and vibration monitoring, the Chief Executive said:

'Based on the available research, which indicates that air pollution and vibration relating to the introduction of road humps is not significant, the council's transportation service does not carry out baseline monitoring ... the council does not have the necessary equipment to carry out vibration monitoring.'

He also said that the noise surveys did include 'bang and clatter' but that there was not a significant number of HGVs recorded during the period of noise monitoring. Finally, the Chief Executive explained that it was not appropriate to compare the traffic calming measures installed in Mr C's neighbourhood with those in the neighbouring area as the roads were different in character.

17. The internal Council document, *Noise Impact Assessment New Speedbumps*, was drafted by a Senior Environmental Health Officer (the Officer). In the document which was specifically about the speed cushions in Mr C's neighbourhood, she referred to the exclusion of road noise as statutory nuisance under legislation, and noted that this meant that Environmental Health would, therefore, not normally investigate traffic complaints in relation to statutory nuisance. However, in this case, following complaints received, including Mr C's and the petition, Environmental Health:

'agreed to carry out some basic noise surveys to determine the potential impact the speedbumps may have had with regards to noise. This service has carried out similar noise impact surveys in other areas where speedbumps have been introduced. The results for [Mr C's neighbourhood] are similar to the results obtained from other areas.'

The Officer then outlined the methodology used for the noise surveys on 24 August 2005 and 16 September 2005 and in relation to vibration surveys noted that the Council did not have equipment to test this but referred to research done by the Transport Research Laboratory. The conclusion reached by the Officer was:

'The introduction of the speedbumps may have changed the characteristics of the traffic noise while they have not led to an increase in overall traffic noise levels, there may be an increase in the impact noise level associated with large HGVs traversing the speedbumps. This is made worse by HGVs not slowing down before traversing the speedbumps. The speed of HGVs may increase in the evening/early morning when there is less traffic to impede their progress. Therefore, it may be appropriate to consider further measures to decrease road traffic speed. The surveys carried out by this Service only provided a brief snapshot of the road traffic noise. It would be preferable if noise surveys could be conducted prior to the installation of speedbumps and consideration given to the mix of road traffic prior to installation of speedbumps.'

This document was referenced by the Chief Executive in his responses to Mr C.

18. The Road Humps (Scotland) Regulations 1998 state at Section 3:

'Consultation on road hump proposals

3. Where a roads authority propose to construct a road hump under section 36 of the Act, in addition to consulting the chief officer of police in accordance with section 37(1) of the Act, they shall consult - ...



- (b) the fire authority in whose area the road is situated;
- (c) the Scottish Ambulance Service NHS Trust;
- (d) such persons or organisations representing persons who use the road or who are otherwise likely to be affected by the road hump, as the roads authority think fit.'

19. The Noise and Statutory Nuisance Act 1993 defines 'Nuisance caused by noise in roads in Scotland' at Schedule 1 as '... 'road noise', that is to say noise emitted from or caused by a vehicle, machinery or equipments in a road' but that this 'does not apply to road noise made ... by traffic ...'.

### *Conclusion*

20. It is clear that Mr C, who was a spokesperson for the petitioners, is upset at his reported experience of disturbance as a result of traffic passing over the speed cushions in his neighbourhood. He believes that the Council did not consult properly and that they should have advised residents of the possible consequences of installing speed cushions. However, having considered the relevant legislation, Council procedures and the consultation letters and notices, it is clear that the Council did fulfil its obligations in terms of statutory consultation. Mr C may think that the letters should have been worded differently or have been sent to more residents, but the wording of consultations is not set out under statute. In addition, there is no requirement under legislation for the Council to advise of possible consequences of the installation of speed cushions or to test for subsequent effectiveness. In contrast, statute is clear that the Council had the discretion to identify particular additional consultees as they thought fit, using their professional judgement. It is also important to note that I have seen no evidence that Mr C objected to the proposed installation of the speed cushions during the consultation period. If he had, it would have been open to Mr C to ask questions about the potential impact or consequences.

21. Mr C did not agree with the Chief Executive's responses on behalf of the Council, although Mr C's disagreement is not a complaint of maladministration. My reading of the evidence is that the Chief Executive made several attempts to deal with Mr C's concerns as expressed in correspondence and the Council was not engaging in an exercise in obfuscation as Mr C claimed. At the beginning of the complaint he met with Mr C to receive the petition and discuss the matter, and during their response to the complaint the Council carried out surveys to investigate the problem Mr C was reporting. Although Mr C was of the view that

the surveys were irrelevant, the content of the relevant Traffic Advisory Notices and the Chief Executive's explanations to Mr C suggest that their approach to the traffic calming scheme and their response to Mr C's complaint was based on the available research and established testing methodology which was practice that has been used in other areas within the Council boundary. Mr C complained that the Council had an unnecessary focus on HGVs when carrying out the surveys and that he had made abundantly clear the role of other vehicles in creating the noise he reported. However, it is clear to me that there is significant reference to HGVs in Mr C's correspondence and I, therefore, understand why the Council looked at HGVs.

22. Mr C made a serious accusation that the Council were prejudiced against his neighbourhood because it was seen as a 'Council estate' in comparison with nearby areas. In relation to this complaint I can find no evidence of prejudice on the part of Council officers. The records show that the Council engaged fully and reasonably over a long period with Mr C's complaint and tried to respond to it at each stage. The reports and responses I have seen were written professionally and objectively, based on legislation and research.

23. Although the consultation was not carried out to Mr C's satisfaction, the Council did comply with their statutory obligations and have clearly engaged with his complaint and tried to assist Mr C and, therefore, I do not uphold this complaint.

**Explanation of abbreviations used**

Mr C	The complainant
The Council	West Lothian Council
MPH	Miles per hour
HGV	Heavy goods vehicle
The Officer	A Senior Environmental Health Officer with the Council

**Glossary of terms**

Speed cushions/road humps	A type of traffic calming measure
Traffic calming	Traffic calming is a set of strategies used by urban planners and traffic engineers which aim to slow down or reduce traffic
Transport Research Laboratory	Transport Research Laboratory (TRL) was established in 1933 as part of the UK Government and was privatised in 1996 to become a fully independent private company. TRL provides independent and impartial world class research, consultancy, advice and testing for all aspects of transport.

**List of legislation and policies considered**

Scottish Public Services Ombudsman Act 2002

Environment Protection Act 1990

Noise and Statutory Nuisance Act 1993

Roads (Scotland) Act 1984

The Roads (Traffic Calming) (Scotland) Regulations 1994

The Road Humps (Scotland) Regulations 1998

The Road Humps and Traffic Calming (Scotland) Amendment Regulations 1999

Department for Transport Traffic Advisory Leaflet 04/94 Speed Cushions

Department for Transport Traffic Advisory Leaflet 04/96 Traffic Management and Emissions

Department for Transport Traffic Advisory Leaflet 06/96 Traffic Calming: traffic and vehicle noise

Department for Transport Traffic Advisory Leaflet 08/96 Road Humps and ground-borne vibrations

Department for Transport Traffic Advisory Leaflet 01/98 Speed cushion schemes

Department for Transport Traffic Advisory Leaflet 10/00 Road humps: discomfort, noise, and ground-borne vibration

West Lothian Council Statutory Procedures (Traffic Calming/Road Humps)

West Lothian Council Internal Report *Noise Impact Assessment New Speedbumps* (title edited)