

13 May 2019

Complaint reference:
18 013 129

Complaint against:
Watford Borough Council

The Ombudsman's final decision

Summary: The Ombudsman has found no evidence of fault in the way the Council considered Mrs Z's neighbour's retrospective planning application or the approach it took when dealing with the planning breaches she reported. The Council took longer than it should to respond to Mrs Z's complaints. The Ombudsman recommends the Council apologise to Mrs Z for the uncertainty and frustration caused by the delay.

The complaint

1. Mrs Z is complaining about the way the Council has dealt with her concerns about her neighbour's extension. She received no help when she tried to raise concerns about the building work not being in line with planning permission. Mrs Z is also unhappy she has not heard from the Council's Enforcement Team about issues it said it would look into for her about her neighbour's building work. Mrs Z feels the Council has not taken her complaints seriously and that her rights have been ignored.

What I have investigated

2. Mrs Z's complaints relate to planning applications made by her neighbour in 2016, 2017 and 2018. The scope of my investigation is limited to the way the Council has dealt with Mrs Z's concerns relating to the retrospective planning application the Council approved in May 2018 and its investigation of Mrs Z's complaints to its Building Enforcement Team. This is because the Ombudsman cannot investigate complaints when someone takes more than 12 months to complain to us about something a council has done.

The Ombudsman's role and powers

3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)

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5. If we are satisfied with a council'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*)
 6. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

How I considered this complaint

7. I have spoken to Mrs Z about her complaint and considered the information she provided. I have also considered the information the Council provided in response to my enquiries, together with Mrs Z's neighbours' planning applications which are published on the Council's online planning portal.
8. I have considered:
 - the Town and Country Planning (Development Management Procedure) (England) Order 2015, which sets out the process for dealing with planning applications, and
 - the Government's Guidance on determining a planning applications.
9. I have written to Mrs Z and the Council with my draft decision and considered their comments.

What I found

10. When planning permission is granted, development must take place in accordance with the permission and conditions attached to it. New issues may arise after planning permission has been granted, which may require modification to the approved proposals. Where these modifications are fundamental or substantial, a new planning application under Section 70 of the Town and Country Planning Act (TCPA) 1990 will need to be submitted.
11. Councils can take enforcement action if they find planning rules have been breached. But they do not have to take enforcement action just because there has been a breach of planning control. Section 171A of the Town and Country Planning Act 1990 provides a breach of planning control as:
 - the carrying out of development without the required planning permission; or,
 - failing to comply with any condition or limitation subject to which a council has granted planning permission.
12. Enforcement action is discretionary and Government guidance says it should be proportionate. Addressing breaches of planning control without formal enforcement action can be the quickest and most cost-effective way of achieving a satisfactory outcome.
13. In deciding whether it is expedient to start enforcement action, the council can take account of several different factors including national and local planning policies, permitted development rights, whether the development is likely to be granted planning permission, and the need to achieve a balance between protecting amenity and permitting development which is acceptable.

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14. A council may invite a retrospective application to regularise development which has already been undertaken. Councils must consider any such application in the normal way.
 15. Planning permission is required for the development of land. However, parliament has given blanket permission for some minor works. This is known as permitted development. There is a third process between permitted development and a full planning application known as prior notification (also referred to as prior approval). Prior notification applies when a development is, in principle, permitted development but the local planning authority must authorise certain elements of the work.

What happened

Planning

16. The Council granted conditional planning permission for works to extend a neighbouring property in June 2016. The Council sent out notification of the proposed works to four neighbouring properties, including Mrs Z's property. The Council received no responses in objection from the notified properties.
17. The Council received an application from Mrs Z's neighbour at the end of 2016 to modify the previous plan. The proposed extension was slightly bigger and Mrs Z's neighbour provided an expert report to support that the proposed changes would not create a harmful loss of light to neighbours. The Council sent notifications to six neighbouring properties, including Mrs Z's property. Mrs Z and the owner of the property attached to her neighbour's submitted objections to the revised plans. The Council considered Mrs Z and the other neighbours' comments individually and in detail within its planning report. In February 2017, the Council granted conditional planning permission for the revised application.
18. At the end of January 2018, Mrs Z's neighbour made a retrospective planning application after works had started. This application requested permission for the front porch the neighbour had built and retention of the side and rear extension with a revised roof. The Council sent notifications to the same six neighbouring properties, including Mrs Z's property. The Council received nine objections and one general representation. The Planning Officer listed and commented on each of the objections individually, making specific reference to relevant sections of the Council's Residential Design Guide and how previous applications had considered the potential harm to neighbours' amenity in detail. The Planning Officer also highlighted where objections were not material to planning consideration, such as civil issues about alleged trespass and the quality of building work.
19. The Council's Planning Committee met to consider the retrospective planning application in April 2018. The Committee Chair invited Mrs Z to speak to the Committee in opposition to the application. While the Committee sympathised with Mrs Z and other neighbours' concerns, it noted that most of the building work Mrs Z's neighbour had carried out was within permitted development rights. The Council granted conditional planning permission following the Planning Committee's decision in early May 2018.

Planning Enforcement

20. Mrs Z's contact with the Council's Planning Enforcement Team started in November 2017. The Council assigned an Enforcement Officer to the case and Mrs Z had regular contact with him between November 2017 and February 2018,

when her neighbour applied for retrospective planning permission. Mrs Z raised concerns about the roof height of her neighbour's extension, the size and positioning of windows and doors in the neighbour's garden room and the addition of a porch to the front of her neighbour's property.

21. The Enforcement Officer undertook site visits to investigate each of the concerns Mrs Z raised. He explained that:
- outbuildings were permitted developments that did not require planning permission, provided they took up no more than half the garden and were no higher than 2.5 metres.
 - the Council had no control over side windows at ground level on outbuildings.
 - her neighbour's porch was within permitted development rights as it did not exceed a floor area of 3 square metres.
 - Mrs Z should register her objections and comments about her neighbour's retrospective planning application to regularise the side and rear extension roofs to make sure the Council takes these into account in deciding whether to grant permission.

Mrs Z's complaint

22. Mrs Z made a complaint under stage 1 of the Council's procedure in mid May 2018. She complained about the lack of support she had received from the Council when she had tried to report planning breaches on the building work her neighbour had started in 2017. Mrs Z said her calls to the Council about this had been ignored and this meant she had now ended up with her neighbour's extension being closer than it should. Mrs Z felt the Council's failure to act had led to this situation. Mrs Z was also unhappy the Head of Planning had not responded personally to letters she had addressed to them.
23. The Head of Planning responded to Mrs Z's complaint in early July 2018. He apologised for the delay in replying to her concerns. In response to Mrs Z's complaints, he said it was not uncommon for the planning officer assigned to the planning application in question to respond to letters addressed to the Head of Planning. He explained it was not possible for him to respond to this type of correspondence personally due to the number of planning applications the Council received every year. He noted the designated planning officer with relevant knowledge about the planning application Mrs Z's neighbour had made provided a comprehensive response to Mrs Z's concerns.
24. The Head of Planning noted Mrs Z's calls were returned promptly by the planning officer involved. He also explained that all issues Mrs Z had raised about the building work her neighbour was undertaking were immediately passed to the building enforcement team for investigation. The building enforcement team had carried out site visits and spoken to Mrs Z to discuss the issues she had raised.
25. Mrs Z escalated her complaint to stage 2 of the Council's procedure shortly after receiving the Head of Planning's stage 1 response. She remained dissatisfied with the Council's lack of help when she had tried to report concerns while her neighbour was carrying out work to his property. Mrs Z said she felt the Council had allowed her neighbour to get away with breaching planning rules because it had not acted to stop him from continuing works which she felt were outside the approved planning permission.
26. Mrs Z's stage 2 complaint was allocated to the Council's Deputy Managing Director for investigation and response. He contacted Mrs Z and offered to meet

with her at her home to discuss the concerns she had about her neighbour's building work.

27. Mrs Z, the Deputy Managing Director and another Council employee met at Mrs Z's home in September 2018. The Deputy Managing Director wrote to Mrs Z at the end of October 2018 to follow up on their meeting. He confirmed he had:
- a) asked a building control officer to monitor the issue Mrs Z had raised about water leaking onto her property from the roof of her neighbour's side extension;
 - b) asked the building enforcement team to investigate Mrs Z's concern that her neighbour's use of the outbuilding in his garden was not incidental to the main dwelling house in accordance with permitted development rules; and,
 - c) discussed Mrs Z's complaint about the lack of information available to help someone if they want to raise concerns about building work or the planning process with the Council.

The Deputy Director apologised to Mrs Z for the delay in sending her the stage 1 complaint response and invited Mrs Z to contact the colleague who attended the meeting if she needed to highlight any further issues.

28. Mrs Z complained to the Ombudsman in November 2018 as she had heard nothing further from the Council following her meeting with the Deputy Managing Director in September 2018.

Analysis

Planning

29. The Ombudsman is not an appeal body. We look for fault in the process by which decisions are made and do not criticise judgements made by the Council's officers and members if there is no fault.
30. When making its planning decisions, the Council is obliged to consider the impact development will have on neighbours, whether they object or not. In this case, Mrs Z's objections, together with the comments made by others, were fully examined within the Council's planning report. Mrs Z also had the opportunity to speak to the planning committee about her concern with her neighbour's retrospective planning application.
31. The planning committee considered the Council's planning report which addressed key issues before making its decision. One of the key issues was the impact of the development on Mrs Z and the other attached neighbour. While the planning committee expressed some sympathy for the concerns Mrs Z had about her neighbour's unauthorised changes to the development, it reached its decision to grant planning permission properly. In particular, the planning committee noted substantial elements of the extensions could have been built within permitted development rights and what had been built did not result in undue overlooking or harm to neighbours. Mrs Z is unhappy with the Council's decision but I do not find fault in the way this was made.

Enforcement

32. Councils have a duty to investigate complaints about breaches of planning and building control. If a breach is found, the Council's next duty is to take a view on whether it needs to do something about it or not. The key issue is whether the alleged breach of control would unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest.

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33. When deciding whether enforcement action would be appropriate, the test is therefore whether, in the interests of public amenity, enforcement action would be expedient. In effect, the council applies two tests: the 'amenity' test and the 'expediency' test. First, who or what is harmed by the development and second, if the breach does cause harm, is it expedient to act. Councils have power to enforce but they have no duty to do so. Also, if a council decides that enforcement action is appropriate, it must follow government guidance which says any action it takes should be proportionate and commensurate with the breach of control to which it relates.
34. The Council's building control and building enforcement teams continue to engage with Mrs Z and her neighbour about the outstanding issues described at paragraph 26a and 26b. Based on the evidence provided I am satisfied the Council is responding appropriately and has taken Mrs Z's concerns seriously. While I appreciate Mrs Z would like the Council to take more forceful action to address her concerns about her neighbour's building work, the Council is entitled to take the action it considers proportionate and I have not seen evidence of fault in the way the Council has considered matters that would give me cause to question its approach.

Complaint handling

35. The Council's complaints procedure states it will seek to provide responses to stage 1 and 2 complaints in 10 working days. At stage 2, the Council may offer to meet with a complainant to discuss their complaint as an alternative. Where a meeting takes place, the Council will provide a response to the stage 2 complaint within five working days of the meeting.
36. Mrs Z first raised her stage 1 complaint with the Council on 12 May 2018, which was automatically acknowledged online by the Council on the same day. She contacted the Council again on 5 June 2018 when she had received no reply. It took the Council a further five weeks to issue its stage 1 response. Mrs Z had to wait for 39 working days to receive a response that should have taken 10 working days. While the Council has apologised for the delay on more than one occasion, it has not explained why it took so long to reply or why it did not contact Mrs Z in the meantime to let her know its stage 1 response would be late. This is fault and caused Mrs Z frustration.
37. Mrs Z escalated her complaint to stage 2 on 10 July 2018. The Council acknowledged receipt on the same day. The Deputy Managing Director contacted Mrs Z 13 working days later to say he had discussed the matter with the officers involved and considered the relevant correspondence. He asked to meet with Mrs Z at her home to discuss the outstanding issues she had and to view her neighbour's extension. The meeting with Mrs Z did not take place until 18 September 2018, which the Council says was the first date both parties were available. It then took a further five weeks for the Deputy Managing Director to provide his follow up response, which should have been sent five working days after the meeting. While I appreciate part of the delay was agreed by Mrs Z, this is still a considerable amount of time in excess of the Council's published timescales for responding to stage 2 complaints.
38. It appears Mrs Z did not receive the Deputy Managing Director's stage 2 follow up letter in October 2018. Mrs Z only became aware of this letter and its content in January 2019 when we shared the copy we received from the Council with her. While this is unfortunate, Mrs Z accepts the Council did send this letter to her in October 2018 and does not wish to complain to the Ombudsman about not

receiving it at the time. The Council was nonetheless late in responding to Mrs Z stage 2 complaint and this is fault. I can see how the delays in responses at both stages of the complaints procedure have led to uncertainty for Mrs Z and left her feeling the Council was not taking her concerns seriously.

39. Part of Mrs Z's complaint related to the lack of information available to people who want to raise concerns about a planning application or breach of planning. In response to our enquiries, the Council has said it has made changes to its website's homepage following Mrs Z's complaint, which makes it easier for people to access the relevant sections to comment on planning applications or report planning breaches. While this action appropriately addresses this aspect of Mrs Z's complaint, it is disappointing the Council did not inform her it had made this change to its website as a result of her complaint.

Agreed action

40. To remedy the injustice identified in paragraphs 36 to 38, the Council has agreed to apologise to Mrs Z for frustration and uncertainty caused by the delay in responding to her complaints. The Council should complete this remedy within two weeks of the date of my final decision:

Final decision

41. I have completed the investigation and uphold Mrs Z's complaint about delay as set out in paragraphs 36 to 39. The Council has caused injustice by its delay to Mrs Z and has agreed to apologise to remedy this.

Investigator's final decision on behalf of the Ombudsman