

The Ombudsman's final decision

Summary: We will not investigate Mrs X's complaint about the Council's handling of a planning enforcement matter. This is because there is no evidence of fault in its approach. We will not investigate Mrs X's complaint about the Council's failure to provide details of a previous application as it would be reasonable for her to take the matter to court.

The complaint

1. The complainant, Mrs X, complains the Council has not taken formal enforcement action against a developer for a breach of planning control. She also complains it failed to keep proper records of past planning applications.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure', which we call 'fault'. We must also consider whether any fault has had an adverse effect on the person making the complaint, which we call 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start an investigation if the tests set out in our Assessment Code are not met. (*Local Government Act 1974, section 24A(6), as amended*)
3. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)

How I considered this complaint

4. I considered information provided by Mrs X and the Council.
5. I considered the Ombudsman's Assessment Code.

Background

6. Mrs X bought her property, a new-build, several years ago. The development is not yet complete but the developer has failed to comply with the plans and layout approved by the Council. Mrs X reported this to the Council but the Council has not taken formal enforcement action against the developer. A planning application has now submitted to change the layout but Mrs X believes the Council should force the developer to complete works in accordance with the original plans. She says the Council failed to keep records of a previous

application to change the layout or to provide details of this application to purchasers.

My assessment

7. The Council accepts the developer has not complied with the approved plans but it is under no obligation to take formal enforcement action in every case; it must consider whether what the change is acceptable and this is the role of the application process. The Council has decided not to take further action until the application is decided and there is no evidence of fault in this approach.
8. Mrs X considers the Council should refuse the application but the process is ongoing. We will not therefore consider any complaint about the Council's handling of the application at this time. In the event the Council does grant planning permission for the changes, and if Mrs X believes it failed to properly consider the proposal, she may raise a new complaint. If once she has completed the Council's complaints procedure she remains unhappy she may refer the matter to us.
9. If Mrs X considers she was misled by the developer when purchasing her property she may wish to seek legal advice. She may also seek legal advice about a possible claim against the Council, if she believes it failed to provide relevant information as part of her purchase of the property.

Final decision

10. We will not investigate this complaint. This is because there is no evidence of fault by the Council in its handling of the enforcement matter and the courts are better placed to decide if the Council should have provided details of the previous application to Mrs X in response to her local searches.

Investigator's decision on behalf of the Ombudsman