

The Ombudsman's final decision

Summary: We will not investigate this complaint about the Council's failure to take sufficient enforcement action over a breach of planning regulations. There is insufficient evidence of fault which would warrant an investigation.

The complaint

1. Mr X complained about the Council's failure to take action over unauthorised development by his neighbour. He also says he was subject to excessive noise when the approved works took place.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure', which we call 'fault'. We must also consider whether any fault has had an adverse impact on the person making the complaint, which we call 'injustice'. We provide a free service but must use public money carefully. We do not start or may decide not to continue with an investigation if we decide:
 - there is not enough evidence of fault to justify investigating, or
 - we could not add to any previous investigation by the organisation, or
 - further investigation would not lead to a different outcome.

(Local Government Act 1974, section 24A(6))

How I considered this complaint

3. I considered information provided by the complainant.
4. I considered the Ombudsman's Assessment Code.

My assessment

5. Mr X says his neighbour completed a garage with a higher floor level than the approved plans. He reported it to the Council but it told him it would not take enforcement action because the difference was insufficient to warrant action.
6. He later noted that his neighbour had constructed a raised terrace area which had no planning approval. He reported it to the Council and it advised the neighbour to submit a retrospective application for the work completed. Mr X objected to the application on the grounds of privacy and overdevelopment. The Council

approved the application after attaching a planning condition for a 2-metre fence to prevent loss of privacy.

7. Mr X says the construction noise from the works caused serious disturbance to him for a period of four months. He believes this should have been taken into account as part of the planning process and that works so close to occupied homes should not be approved. Construction noise is not a material planning consideration and it is accepted that this will take place at some time during the three-year approval period.
8. Planning enforcement is a discretionary power and before taking enforcement action, the Council must be satisfied that such action is the right thing to do (that it is 'expedient'). Government guidance says councils should act proportionally. To decide this, councils should consider whether they would approve the unlawful development, if they had received an application. In this case the Council asked the neighbour to submit an application for the works and this was considered and approved.
9. When considering complaints, we may not question the merits of the decision the Council has made or offer any opinion on whether or not we agree with the judgment of the Councils' officers or members. This means we will not intervene in disagreements about the merits of decisions.

Final decision

10. We will not investigate this complaint about the Council's failure to take sufficient enforcement action over a breach of planning regulations. There is insufficient evidence of fault which would warrant an investigation.

Investigator's decision on behalf of the Ombudsman