

Complaint reference:
17 002 592

Complaint against:
East Devon District Council

The Ombudsman's final decision

Summary: Mr X complained the Council failed to take enforcement action to protect him from his neighbour's boiler flue. There was no fault in the way the Council made its decision.

The complaint

1. Mr X complains the Council failed to take enforcement action against his neighbour whose boiler flue pipe did not comply with regulations.
2. Mr X said the boiler flue was noisy and discharged fumes onto his property.

The Ombudsman's role and powers

3. 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*)
4. 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*)

How I considered this complaint

5. I read the complaint and discussed it with Mr X. I read the Council's response to the complaint and parts of the Building Regulations 2010 relating to combustion appliances.
6. I gave Mr X and the Council an opportunity to comment on a draft of this decision.

What I found

Building Regulations, guidance and enforcement

7. The Building Regulations 2010 cover the construction and extension of buildings. The purpose of the regulations is to ensure public safety.
8. Developers are obliged to comply with building regulations and work may be inspected by councils or through contracts with private inspectors. A specialist trades person (e.g. for windows or boilers) may be registered as a 'competent person' for building regulations purposes.
9. Building regulations contain guidance and indicators of best practice, but enforcement action is discretionary and so it is up to the judgement of Council

Building Control Officers whether and how to enforce the regulations. Councils should not interpret guidance as if it creates binding rules: they should always be prepared to exercise discretion. The government advises councils that enforcement powers should only be used if a breach causes or is likely to cause significant harm or risk of harm.

What happened

10. Mr X says that a Building Control Officer (BCO) had required his neighbour to move the flue of a gas boiler. Until this time the flue had caused no problem to Mr X, but afterwards it discharged fumes over his property. The boiler flue was fitted by a competent person, registered for the purposes of building regulations.
11. Mr X complained to the Council but its BCO decided not to use its enforcement powers.
12. The BCO acknowledged the boiler flue's position did not meet with guidance, but in his view it did not cause a significant risk to the public. The Officer saw no reason to override the judgement of the competent person.
13. Mr X disagreed with the Officer's judgement and sought advice from the relevant professional trade body. A senior representative of the trade body visited the site and advised the competent person to move the flue, as its position did not meet with guidance.
14. Mr X believes the Council should have used its powers to move the flue.

My findings

15. We are not an appeal body to council decisions. Our role is to review the process by which decisions are made and, where we find fault in process, to consider whether it caused a significant injustice.
16. I find no fault in the way the Council acted here. The Council has discretion on whether to use its building regulation enforcement powers and in considering the circumstances along with its statutory powers, it has followed the process we expect. Its role is to protect the public, and in the opinion of its BCOs, the public was not at risk. This was a judgement it was entitled to make.

Final decision

17. I have completed my investigation as I found no fault in the way the Council made its decision not to take building control enforcement action.

Investigator's decision on behalf of the Ombudsman