

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr X's complaint that the Council granted planning permission for a bigger dwelling than he was allowed on land he used to own. The Council's recent decision does not cause Mr X injustice and if he was unhappy with the decision on his application it would have been reasonable for him to appeal.

The complaint

1. The complainant, Mr X, complains the Council imposed a condition restricting the height of a new dwelling on his land but later granted planning permission for a bigger dwelling on the same land. He says that as a result he sold the land for £40,000 less than its true value.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - the fault has not caused injustice to the person who complained, or
 - the injustice is not significant enough to justify our involvement, or
 - it is unlikely we could add to any previous investigation by the Council, or
 - it is unlikely further investigation will lead to a different outcome, or
 - we cannot achieve the outcome someone wants.

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

3. The law says we cannot normally investigate a complaint when someone can appeal to a government minister. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. *(Local Government Act 1974, section 26(6)(b))*
4. The Planning Inspector acts on behalf of the responsible Government minister. The Planning Inspector considers appeals about:
 - delay – usually over eight weeks – by an authority in deciding an application for planning permission

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- a decision to refuse planning permission
 - conditions placed on planning permission
 - a planning enforcement notice.

How I considered this complaint

5. I reviewed Mr X's complaint and the Council's response. I shared my draft decision with Mr X's representative, Mr Y, and considered his comments.

What I found

6. Mr X applied for outline planning permission to build a new dwelling on his land more than five years ago. The Council granted permission subject to a condition limiting the height of the new dwelling. Mr X sold the land and his own property and has recently found out the Council granted the new owner permission to build something much taller than the condition on his planning permission allowed. He says the land is now valued at some £40,000 more than he sold it for and would like the Council to compensate him for this.
7. The Ombudsman will not investigate this complaint. The Council granted planning permission for the new owner to build a larger dwelling than Mr X was allowed but this is not evidence of fault in the original decision. There were several years between the two applications and the Council has explained to Mr X why it was necessary to limit the height of his proposal but felt the new owner's application to build a larger dwelling was acceptable.
8. Mr X complains now because the new owner has completed the build and he believes he was treated unfairly. But while the Council's decision benefitted the new owner it did not cause Mr X injustice; by the time it decided the new owner's application Mr X had sold the land and no longer had any interest in it. There was no requirement for Mr X to do this and it was his choice; he made money on the sale and was happy with the price at the time. If Mr X had wanted to build something bigger on the land he could have appealed against the Council's decision to the Planning Inspectorate and/or could have made a new application.

Final decision

9. The Ombudsman will not investigate this complaint. This is because the Council's recent grant of planning permission does not cause Mr X injustice, and if Mr X was not happy with the Council's decision on his application it would have been reasonable for him to appeal.

Investigator's decision on behalf of the Ombudsman