

The Ombudsman's final decision

Summary: We will not investigate Mr X's complaint about the Council's consideration of and decision on his planning application. Mr X has rights of appeal to the Planning Inspectorate against the Council's refusal decision. That appeal provides the remedy Mr X wants, for his application to be reconsidered.

The complaint

1. Mr X bought a holiday park with several static caravan lodges. The existing planning permission prohibits owners from living in their lodges throughout the year. Mr X applied for planning permission to vary the park's existing permission to allow residents to live in their lodges year-round.
2. Mr X complains the Council:
 - a) failed to properly consider his planning application;
 - b) incorrectly called into question the credibility and honesty of his application.
3. Mr X says the matter has caused him and the lodges' residents stress. He has also had an expense of £8-10,000 on the planning application. Mr X wants his planning application to receive a fair hearing.

The Ombudsman's role and powers

4. 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)*)
5. 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
 - a decision to refuse planning permission
 - conditions placed on planning permission
 - a planning enforcement notice.
6. 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

7. As part of my assessment I have:
 - considered the complaint and the documents provided by Mr X;
 - viewed relevant online planning documents;
 - issued a draft decision, inviting Mr X to reply, and considered his response.

What I found

8. In his supporting planning statement, Mr X's agent said:
 - Mr X bought the park unaware that some of the tenants were not told by the former owner about the restrictions on permanent residence;
 - Mr X became aware of this situation when those affected tenants told him about it, after he bought the park.
9. Officers interpreted the planning statement as Mr X claiming he had not know about the holiday tenancy restrictions on the park's permission before he bought it. Council officers and Members made disbelieving remarks during the planning process. Mr X believes his application did not receive a fair hearing and may have been refused because officers and Members misunderstood his supporting statement.
10. The outcome Mr X seeks from his complaint is for his planning application to be reconsidered. Mr X has a formal right of appeal to the PINS against the Council's decision to refuse the permission. Mr X should use that appeal right, and it is reasonable for him to do so. I say this because his PINS appeal would provide him with the outcome he seeks. A PINS appeal would look at his application afresh, as if it has been made directly to the PINS, without prior consideration by the local planning authority.
11. Mr X says he cannot afford the appeal process and associated costs. He says he should not have to pay to achieve a fair hearing of the application at appeal. There is no fee payable to the PINS to submit an appeal. If Mr X decides to employ agents to lodge the appeal for him, that would be his decision to make. The appeal process is the appropriate formal route for applicants, provided by national government, to use if their permission is refused.
12. It is unfortunate officers misinterpreted Mr X's planning submission, which was then discussed by Members at the planning committee meeting. The Council apologised to Mr X for the comments made by officers and Members. That is the appropriate outcome and is the one the Ombudsman would have sought had the core planning matter been one we would investigate. I agree with Mr X that the Council's apology also mentions his planning agents might have been clearer in the wording of the planning statement. But the emphasis in the Council's final complaint response is to accept that the document was misinterpreted due to officers' error.
13. I understand the Council has an ongoing enforcement case regarding breaches of residency planning conditions at the park. We cannot intervene in an ongoing enforcement matter. If the Council takes formal enforcement action against Mr X, he would have a further right of appeal against this to the PINS. He may wish to take independent legal advice on this issue.

Final decision

14. We will not investigate this complaint. This is because:
- Mr X has the right of appeal to the PINS against the Council's consideration of and decision on his planning application; and
 - it is reasonable for Mr X to use his PINS appeal because it provides him with the outcome he seeks, the reconsideration of his application.

Investigator's decision on behalf of the Ombudsman