

The Ombudsman's final decision

Summary: We will not investigate Mrs B's complaint about the way the Council dealt with her applications for pre-application advice and planning permission. This is because there is not enough evidence of fault by the Council to warrant an investigation.

The complaint

1. The complainant, Mrs B, complained about the way the Council dealt with her applications for pre-application advice and planning permission.

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:
 - there is not enough evidence of fault to warrant an investigation, 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. (*Local Government Act 1974, section 24A(6), as amended*)

How I considered this complaint

3. I have considered the information Mrs B provided and the information the Council has published on its website. Mrs B has had an opportunity to comment on my draft decision.

What I found

4. Councils can provide pre-application advice to members of the public. There is normally a charge for this service.
5. The Council has a published pre-application charging schedule and customer charter which it reviewed in January 2017. This says it will provide an initial response, and where possible a full response, within four weeks of receiving a

valid pre-application submission. The Council says it provides all advice on the basis it is the informal advice of officers only at that moment time. It will not prejudice its final decision on an application. The Council says its written advice will lay out the issues the development would raise, specify what improvements could be made to the scheme to make it acceptable or, if officers feel the principle of development is unacceptable, what their recommendation may be.

6. Mrs B twice sought pre-application advice from the Council about development of a site located in the rear garden of a listed building. When it replied to Mrs B's complaint the Council said she did not submit plans with her first request. That meant it would have been very difficult for its officers to gauge the impact of the development. The Council said it did not use the word sub-division when giving its advice about the development of the site. But it said it had made it clear there was clearly a concern regarding the development's potential impact on the setting of the listed building and the adjacent conservation area. The Council said what was key is that developing the site is not objectionable in principle subject to ensuring it causes no harm.
7. In 2019 the Council provided pre-application advice for the second time. It said it would not support the proposed development because of the effect it would have on the existing setting.
8. Mrs B subsequently made an application for planning permission to develop the plot. The Council refused planning permission. It said the impact of the proposed development on the heritage assets was moderate adverse.
9. Mrs B then made a second application for planning permission. The case officer's report on the application said this application had addressed design and amenity issues. This was one of the reasons why the Council had previously refused planning permission. The case officer's report said the site was in an area where development was acceptable in principle. But the case officer recommended refusal of the application because the proposed sub-division of the plot and the development in the manner proposed would be somewhat out of character with the surrounding pattern of development and, more importantly, it would harm the setting of the listed building.
10. Mrs B appealed against the Council's refusal but her appeal was unsuccessful. After balancing the public benefits of the proposal against the harm to the significance of the historical asset, the planning inspector found the benefits did not outweigh the harm.
11. In her complaint to the Council Mrs B said, if the Council's officers had done their job properly and advised no development could take place because sub-division of the plot had an impact on the heritage asset, she would not have submitted any planning applications. When she complained to us Mrs B said the Council failed to mention sub-dividing the land being an issue when it provided pre-application advice and when it dealt with the first planning application. She said sub-division was a major issue and the Council should have stated this at the very beginning. Mrs B said the Council's planning officers have caused her to lose thousands of pounds and wasted her time, leading her "up the garden path".
12. In this case, any development of the rear garden would inevitably mean the existing plot would be sub-divided. But the Council has consistently said development was acceptable in principle. So the Council was not at fault in this respect. The Council consistently highlighted the importance of the issue of the impact of the proposed development on the heritage asset. Sub-division of the plot was not, of itself, the key issue. It was whether the benefits of the proposed

development would outweigh the harm to the heritage asset. So there is not enough evidence of fault by the Council to warrant an investigation.

Final decision

13. We will not investigate this complaint. This is because there is not enough evidence of fault by the Council to warrant an investigation.

Investigator's decision on behalf of the Ombudsman