

The Ombudsman's final decision

Summary: Mr X complains mistakes in how the Council considered a neighbouring planning application have resulted in the completed building adversely impacting his property. The Council has accepted it was at fault for the way it handled the prior notification application and has taken action to prevent such faults happening again. However, the Council would not have been able to prevent the construction of the building. There is no evidence the fault by the Council has caused the injustice Mr X claims.

The complaint

1. Mr X complains mistakes in how the Council considered a neighbouring planning application have resulted in the completed building adversely impacting his property.

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'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. 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*)
5. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*). I have decided to investigate the Council's planning decision in October 2015 as Mr X only became aware of the impact of the Council's decision in November 2016 and has since engaged in correspondence with the Council to try and resolve the matter before coming to the Ombudsman.

How I considered this complaint

6. I considered Mr X's written complaint and the Council's response to my enquiries. I also considered the original planning application, the planning officer's report and decision notice.
7. Mr X and the Council have had an opportunity to comment on this draft decision.

What I found

The Law

8. Planning controls the design, location and appearance of development as well as its impact on public amenity. Planning controls are not intended to protect private rights or interests. The Council may grant planning permission subject to planning conditions to control the use or development of land. Councils can take enforcement action if they find a developer has breached planning rules.
9. Some agricultural developments benefit from a grant of planning permission from central government. Such permission, called permitted development, does not require a full planning application to be put in to the Council for approval.
10. The developer must instead put in a prior notification application. The Council then has 28 days to consider whether the proposed development needs prior approval or not. If the Council does not respond in 28 days, and the development meets the criteria for permitted development, it is deemed lawful.
11. If the Council says that prior approval is needed it then has eight weeks to decide the application. Unlike standard planning applications, when considering an application for agricultural permitted development, the Council does not consider material planning considerations. It can only consider the siting, design and external appearance of the proposed building.

What happened

12. On 14 September 2015 the Council received a prior notification application from Mr X's neighbour. The application was to construct a new barn on land behind Mr X's house. On 9 October 2015 the Council issued a decision refusing the application.
13. Mr X wrote to the Council in April 2016. He said his neighbour had begun construction of the barn without planning permission. He asked the Council to take enforcement action as it had refused the application. The Council said it would investigate the matter.
14. Mr X's solicitor wrote to the Council again in May 2016 asking why it had not taken enforcement action. The Council responded saying it was seeking legal advice on the matter. In November 2016 the Council wrote to Mr X's solicitor. It said it had not followed the correct process in its handling of the prior notification application. The Council had failed to state on its decision notice whether prior approval was needed or not. This meant the decision notice was invalid.
15. As more than 28 days had passed since the prior notification application the development was deemed lawful and Mr X's neighbour was entitled to erect the barn. The Council said it could not take enforcement action.
16. Mr X complained to the Council in April 2017. He said the barn was not being used for agricultural purposes. The Council carried out an enforcement visit but could not access the barn. They spoke to the owner who said the barn contained agricultural equipment.

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17. The Council responded to Mr X's complaint in June 2017. It said it was investigating the use of the barn but could not enforce its removal. It apologised for the original error but said had it dealt with the application correctly the Council would still have had no legal basis to refuse the development or protect Mr X's views.
 18. Following further correspondence from Mr X's solicitor the Council carried out a second enforcement visit in September 2017. It inspected the barn and found it to contain agricultural equipment. It wrote to Mr X's solicitor saying it was satisfied the building was being used for agricultural purposes. The Council closed its enforcement file in October 2017. Mr X remained unhappy and complained to the Ombudsman.

My findings

19. The Council has accepted it was at fault for the way it handled the 2015 prior notification application. However, under the Town and Country Planning (General Permitted Development) Order 2015 the Council could not prevent the construction of the barn on the land to the rear of Mr X's house had it acted without fault. The Council could only control the design, siting and appearance of the barn.
20. The barn has the design and appearance of typical agricultural buildings. Mr X says the location of the barn adversely impacts his property and his view. The barn would have been visible from Mr X's property regardless of its location within the land to the rear of his property. So while the Council was at fault, I do not consider this has resulted in the injustice Mr X claims. Since identifying the fault in 2016, the Council has changed its procedures to ensure it follows the correct approach to prior notification applications in future. I am satisfied with the Council's actions.
21. The Council has investigated Mr X's allegations regarding the use of the barn. It has inspected the inside of the barn and is satisfied the barn is being used for agricultural purposes. The Council has found no breach of planning controls and has closed its enforcement file. This is a decision the Council is entitled to take. The Council is not at fault.

Final decision

22. I have decided to complete my investigation as there is no evidence fault by the Council has caused Mr X a significant injustice.

Investigator's decision on behalf of the Ombudsman