

## OMBUDSMAN DECISIONS – 1 APRIL 2008 TO 31 MARCH 2009

No.	Ombudsman main subject area	Details of complaint	Ombudsman decision	Date of decision	Notes
1	Other	That the council failed to take effective action to address noise nuisance from the complainant's neighbours.	Local settlement	29.07.08	<p>The complainant contacted our out of hours (OOH) service on 26.03.07 about noise from her neighbour's property. At that time, the OOH service stated that officers would not investigate noise complaints until they had received complaints from three or more households. Officers therefore sent standard letters to both the complainant and her neighbour, the following day. Enclosed with the letter to the complainant were diary sheets for her to record future incidents of noise disturbance.</p> <p>The complainant, and other neighbours, contacted the OOH service again on 07.04.07; unfortunately, there was an error with the OOH cover arrangements, and no OOH service was available at the time. An officer from the environmental services team wrote to the complainant on 04.05.07 apologising for the error and advising that the matter had been referred to the anti-social behaviour (ASB) case group, a multi-agency body made up of representatives from this council, Thames Valley Police, local housing associations and youth services. Officers made this referral as the neighbour's property is owned by a local housing association and because the complainant made allegations that the neighbour had made physical threats against her.</p> <p>The complainant subsequently returned completed diary sheets and, as a result, officers installed noise monitoring equipment between 22.05.07 and 12.06.07; however, no evidence of noise was recorded. The complainant confirmed she was happy that the problem had been resolved and the case was closed on 13.07.07. However, the housing association continued to monitor the anti-social behaviour.</p> <p>Officers had no further contact with the complainant until 19.11.07, when she contacted the OOH service. Standard letters were again sent to the complainant and the neighbour, and noise monitoring equipment was installed between 23.11.07 and 12.12.07. The equipment recorded six events of noise, five of which were minor events that occurred during the day.</p>

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					<p>The ASB case group discussed the case at a meeting on 06.12.07 and agreed that representatives of the housing association and Thames Valley Policy would contact the neighbour to discuss an acceptable behaviour contract (ABC).</p> <p>Officers again installed noise monitoring equipment between 21.12.07 and 04.01.08 but it did not gather enough evidence to enable them to make an assessment of a statutory noise nuisance. They therefore closed the statutory noise nuisance case on 20.03.08, although the ABC case group continued to monitor the situation.</p> <p>The ombudsman stated that, where a complaint was handed to another agency, officers did not have a clear agreement in place about which agency would take responsibility for keeping the complainant informed. Since then, officers have introduced new processes to ensure complainants are kept informed. They now follow a specific hand over process when they agree which agency is responsible for informing complainants of the next steps and to ensure they are pro-active in explaining any action complainants can take to support on-going investigations or the process to follow if a problem persists.</p> <p>The ombudsman concluded that these new processes, together with changes to the OOH service so that officers will respond to noise complaints that affect individual properties, were a fair settlement of the complaint. He therefore discontinued his investigation.</p>
2	Planning and building control	That the council granted planning permission for an extension without taking proper account of the impact it would have on the complainant's property.	No maladministration	29.04.09	<p>In October 2007 the complainant's neighbour submitted a planning application for a single-storey front extension and first storey rear extension. Officers consulted the complainant, along with other neighbours, the town council and the highway authority. The complainant raised objections to the application; officers did not receive any objections from other neighbours, the town council or the highway authority. Planning permission was granted, under delegated powers, on 05.12.07.</p> <p>The complainant claimed that officers did not take proper account of the impact the extensions would have on her property, or the fact that the loss of parking space would result in additional parking on the highway.</p>

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					<p>The ombudsman responded that officers considered the reduction in parking provision and were right to take account of government guidelines on parking provision in reaching their decision. He also said that officers took account of the impact of the extensions on the complainant's property and that, although they reached a conclusion that the complainant did not agree with, their conclusion was not wholly unreasonable.</p> <p>The ombudsman concluded that there had been no maladministration.</p>
3	Planning and building control	<p>That the council did not take effective enforcement action against the construction of a pool house and subsequently granted retrospective planning consent for the building without taking proper account of the impact of the development on the complainant's property.</p>	No maladministration	08.07.09	<p>We granted the complainant's neighbour planning permission for a tennis court and swimming pool on 20.06.06 and for a pool house on 05.01.07.</p> <p>The neighbour subsequently built the pool house closer to the complainant's boundary than had been show on the plans, and also installed a boiler, which was not shown on the original plans. Officers investigated this breach of the planning consent and asked the neighbour to submit a retrospective planning application, which he subsequently did. Officers consulted neighbours, including the complainant, and the parish council. The parish council and three neighbours objected, and our environmental health team also raised concerns about potential noise from the pump. The officer's delegated report took account of relevant planning policies, the planning history of the site, local objections and the environmental health team's advice; permission was granted on 27.06.07. The permission included a condition that all plant, machinery and equipment should be installed, maintained and operated to ensure that rating noise level from the equipment did not exceed the background noise level at the boundary of the premises.</p> <p>In August 2007 the complainant contacted the planning service to complain about noise and fumes from the boiler. A planning enforcement officer visited the site but found no evidence of a planning breach. An environmental health officer also visited and concluded that the boiler was not working properly. The owner rectified the problem and the officers closed the case and advised the complainant to contact environmental health if she had further concerns about the</p>

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					<p>noise.</p> <p>The ombudsman was satisfied that the planning officer's report on the retrospective application showed that officers had taken account of the relevant planning policies, the objections that had been made to the proposal, and the impact that the development would have on the complainant, in reaching their decision to grant consent. He added that officers had included a specific planning condition intended to protect the complainant's amenity in the event that the building was used to house equipment such as a boiler.</p> <p>The ombudsman concluded that there had been no maladministration.</p>
4	Planning and building control	That officers recommended approval of a planning application that councillors decided to refuse.	Ombudsman's discretion	26.03.09	<p>The complainant objected to a planning application for timber outbuildings on land to the rear of his property. The applicant intended to use the outbuildings in conjunction with an existing tennis club. Officers recommended approval of the application, but, as the town council had raised objections, the application was referred to the planning committee for determination. The planning committee subsequently refused permission.</p> <p>As the committee made the decision the complainant had wanted it to make, even though officers had recommended approval, the ombudsman concluded that there was no injustice for him to pursue for a remedy.</p>
5	Planning and building control	That the council refused to re-issue or amend an enforcement notice to allow the complainant to exercise his right of appeal against an earlier decision.	Outside jurisdiction	19.01.09	<p>In November 2006, the complainant created a terrace to the rear of his property on an existing flat roof extension, together with an access door, which was formerly a window. He claimed that the purpose of the work was to place plant pots onto the flat roof and to clean the guttering and windows. He also installed railings and brick piers surrounding the roof terrace.</p> <p>The complainant did not obtain planning permission prior to carrying out these works. Officers visited the site and, as a result, resolved to pursue enforcement action, due to the unneighbourly and overbearing nature of the development and the subsequent loss of privacy to the neighbouring properties.</p> <p>A planning officer wrote to the complainant on 03.04.07 recommending</p>

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					<p>that he remove the development/cease the use of the balcony, or submit a retrospective planning application within 28 days of the date of that letter. The officer also advised that, in her opinion, a retrospective application was unlikely to be approved. The officer wrote to the complainant again on 03.07.07 and 09.10.07 advising that, unless the structure was removed, or a retrospective planning application submitted, the file would be passed to our legal team for further enforcement action.</p> <p>No application was received and an enforcement notice was therefore served on the complainant on 30.01.08; the notice clearly stated that it would take effect on 14.03.08 unless an appeal was made against it beforehand. It also contained details of the appeal process. The complainant confirmed receipt of the notice in a letter dated 06.02.08 and asked a number of questions, which he said would assist him in putting forward an appeal against the enforcement.</p> <p>The complainant wrote again on 06.04.08 asking for clarification of the breach of planning control; an officer responded on 21.04.08 explaining why the railings required planning permission and reminding the complainant that the enforcement notice had come into effect and that the railings should be removed by 13.06.08</p> <p>The complainant subsequently submitted an appeal on 30.04.08, i.e. after the effective date of the notice; the Planning Inspectorate was therefore unable to accept the appeal. The complainant claimed that, as he was still in correspondence with officers at the time of the effective date of the enforcement notice, he believed the date for submission of an appeal would automatically be extended. He therefore asked that we re-issue the enforcement notice so he could exercise his right if appeal. Officers considered that the complainant had been given adequate time to either submit a planning application or appeal against the enforcement notice and therefore declined to re-issue the enforcement notice.</p> <p>Where a complainant has an alternative way of remedying a complaint the ombudsman may not normally investigate it. In this case, the complainant had the opportunity to appeal against the enforcement notice or submit a retrospective planning application.</p>

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					<p>The ombudsman could therefore not pursue an investigation of this case. However, in his decision letter, the ombudsman stated that, had he been able to carry out an investigation, he would have been drawn to the conclusion that he would have no grounds for ruling there as maladministration.</p>