

OMBUDSMAN DECISIONS – 1 APRIL 2011 TO 31 MARCH 2012

1. Ombudsman decision – No power to investigate

Decision date – 18 April 2011

Ombudsman main subject area – Planning and development

Complaint

That the council:

- failed to take proper account of the impact a garden shed would have upon his privacy and amenity or on the conservation area
- has been inconsistent in its application of local planning guidance (when compared with similar applications)
- failed to consult adequately with the local parish council
- ignored consultation representations having pre-determined the application before comments were received.

Background

Mr A's neighbour erected a large shed in his garden sometime prior to April 2008, without planning permission. Because of the orientation of the gardens, the shed lies directly at the end of Mr A's garden at a higher level. Mr A's neighbour uses the shed for hobbies.

Officers invited Mr A's neighbour to submit a retrospective planning application, which he did in April 2008. This application included a 'design statement' that referred to an intention to plant some fruit trees on the boundary of the two gardens. The application was subsequently amended to take into account trellis that had been erected, which also required planning permission due to its size. Mr A objected on the grounds that it would give rise to overlooking, cause loss of privacy and was out of keeping in the conservation area.

A planning officer produced a report analysing the application and noting Mr A's objections. The officer noted that it is council policy that a distance of 25 metres between windows in new and existing development is maintained to ensure an "adequate standard of privacy"; the distance between Mr A's house and the shed was 45 metres. The officer also noted that there was some trellis on the shed facing Mr A's property; there was scope for further planting in both gardens and that a shed may not be expected to be used as often as a main room in a house. The officer also took the view that the shed would not be visible from the front of the property and so would not adversely affect the conservation area. The application was approved in May 2008. The only planning condition imposed was one that prevented the shed from being used for purposes other than incidental to the enjoyment of the main dwellinghouse; no condition was imposed that required the planting of trees.

Mr A complained about the planning approval in June 2008 and continued to communicate with officers until February 2009. During the course of that correspondence the head of planning acknowledged that the officer report gave the misleading impression that a decision had been made on the application prior to receiving all Mr A's objections and he apologised for that.

Mr A wrote again in March 2009 because his neighbour had failed to plant any trees to screen the shed. As Mr A had already been in correspondence with the head of planning, the strategic director dealt with this correspondence as a stage two complaint. In her response, the strategic director again pointed out that, although the design statements made reference to tree planting alongside the rear boundary this was not a material consideration in respect of the formal planning application. Officers did not consider that it was necessary to impose a planning condition requiring tree planting in order to grant permission for this garden shed/ store. Therefore there was no breach of planning control. Despite this, a planning officer did contact the neighbour urging him to plant trees as he had proposed to.

Ombudsman's conclusions

Mr A lodged a complaint with the ombudsman in 2011. However, the ombudsman cannot investigate a complaint about "something you knew about more than 12 months before your complaint was made to the ombudsman, unless there is good reason for the delay." In this case, the ombudsman did not consider there were special reasons why she should consider Mr A's complaint some two years later. The ombudsman also pointed out that, even if she could be persuaded to take a different line, she did not consider that an investigation would lead her to criticise the council. She concluded that this provided support for the view that an investigation was not merited on grounds of time.

2. Ombudsman decision – No reason to use exceptional power to investigate

Decision date – 29 March 2012

Ombudsman main subject area – Benefits and tax

Complaint

That the council unreasonably treated Mrs B as liable for council tax for a property she has never lived in.

Background

Mrs B lives outside South Oxfordshire but, in 2010, was planning to move to the area. She signed a tenancy agreement for a property but was subsequently prevented from moving into it as a result of a court order sought by her ex-partner. However, as she had signed a tenancy agreement, officers treated her as liable for council tax at the property.

Ombudsman's conclusions

The ombudsman cannot investigate complaints where there is an alternative route for remedy. The Valuation Tribunal establishes liability for council tax and considers appeals against the council's decisions on liability. The correct route for Mrs B to

follow in order to challenge the council's decision, therefore, was to submit a complaint to the Valuation Tribunal.

The ombudsman therefore had no jurisdiction to consider the complaint.

3. Ombudsman decision – Investigation not justified and other

Decision date – 15 December 2011

Ombudsman main subject area – Benefits and tax

Complaint

That the council did not make reasonable adjustments for Ms C's visual impairment and did not provide help in completing application forms for council tax benefit so she was unable to apply for it.

Background

Ms C has a visual impairment and contacted the council in January 2010 for assistance in claiming housing and council tax benefit. Officers attempted to contact her on 21, 22 and 23 January 2010 to arrange a home visit; an officer also carried out an unannounced visit on 27 January, but was unable to contact Ms C.

Ms C then made a complaint to the ombudsman but, as there was no evidence that Ms C had made a complaint to the council, the ombudsman referred it back to us.

An officer wrote to Ms C in September 2010 to explain that we had done to contact her and invited her to call a named officer so that a home visit could be arranged. The officer also asked Ms C to contact the named officer to discuss her council tax arrears and to provide information about her medical condition so that reasonable adjustments could be made. Unfortunately, that letter was not franked by our post room and was therefore not delivered to Ms C. The post officer returned the letter to the council in January 2011; it was reissued to Ms C on 26 January 2011 asking her to contact the named officer by 4 February 2011 to arrange a home visit. We did not receive any further contact from Ms C.

Ombudsman's conclusion

The ombudsman said that, based on the evidence she had seen, she considered we had taken reasonable steps to assist Ms C. She added that, whilst it was unfortunate that the letter of September 2010 was not franked, as soon as we realised the error, we took reasonable steps to put matters right by reissuing the letter and inviting Ms C to contact the named officer.

Ms C had claimed that she had sent completed claim forms to the council but did not provide details of when they were sent or any receipts to provide she had handed forms into the council. The ombudsman could therefore not pursue this aspect of the complaint

The ombudsman concluded that there were no grounds to pursue the complaint and discontinued her investigation.

4. Ombudsman decision – Investigation not justified and other

Decision date – 26 July 2011

Ombudsman main subject area – Planning and building control

Complaint

That:

- the council's chief executive refused to acknowledge that, from 2002, a planning condition for an annual music festival was unenforceable against its intended meaning, causing an unacceptable impact on Ms D's amenity through noise and disturbance, and despite an understanding at the time of the grant of planning permission that the level of noise and any harm arising from the festival would be no greater than permitted by an earlier appeal decision of the Planning Inspectorate
- the chief executive repeatedly, incorrectly stated that Ms D's complaints of breaches of the intended meanings of the planning permission were without foundation
- the council failed to have any procedures in place to uncover maladministration of the kind Ms D believed had occurred.

Background

This complaint relates to an open-air music festival. The festival moved to another site outside of the district in 2011.

Ombudsman's conclusion

The ombudsman said that various issues relating to the meaning and enforceability of the planning permission of 2002 and the planning conditions attached had been examined at length, both by the council and the ombudsman. She did not consider that the matters now referred to by Ms D concerning the lawfulness over time, in planning terms, of the festival, the meaning and interpretation of planning conditions and the responses she had received from the council were sufficiently distinct or severable from those previously considered to give grounds for further investigation. She added that she did not consider that any realistic or useful purposes would be likely to be achieved by such investigation, having regard to the events previously examined and as the festival was no longer operating from the land.

The ombudsman acknowledged that Ms D continued to be very concerned at the course of events since 2002 and that she believed she had been caused avoidable disturbance and difficulty. However, the ombudsman saw no reason to challenge the council's conclusion that, most recently, she had not raised new, substantive issues that the council was no longer able to devote resources to investigation of the matter or to her correspondence in this regard.

The ombudsman added that the council had replied to Ms D's further letters and given its reasoning for its decision. She said that the council was entitled to take the view that additional consideration of the matter was not an appropriate use of limited resources.

The ombudsman said that, if Ms D wished to further challenge the extent of the action taken by the council she may need to seek additional independent legal advice on the options available to her.

For the reasons given, the ombudsman did not see scope to pursue the complaint further.

5. Ombudsman decision – Investigation not justified & other

Decision date – 31 January 2012

Ombudsman main subject area – planning and development

Complaint

That the council failed to ensure building work at a neighbouring property was carried out in accordance with the approved plans.

Background

Planning permission was granted for various works to a property near to Mr E's home. Some of these works were not carried out in accordance with the planning permission. In particular, the bathroom window was clear glazed when a condition on the planning permission required it to be obscure glazed prior to the first occupation of the accommodation. At the time of the complaint the accommodation was not occupied and therefore there was no breach of planning control; officers could not therefore take any formal action. However, officers contacted Mr E's neighbours to remind them of the condition and the window was subsequently obscure glazed before the bathroom suite was installed, i.e. before the occupation of the accommodation.

Ombudsman's conclusion

The ombudsman concluded that the situation regarding the obscure glazing would have to run its course. She added that, if the neighbours did not fit obscure glazing or submit a regularising application then the council would have to decide if enforcement action is warranted. As mentioned above, the window was subsequently obscured glazed so no action was required. The therefore did not consider there were grounds to investigate the complaint.

Mr E had also expressed wide ranging concerns about the conduct of the planning department and asked for an independent investigation, which is not something the ombudsman can do. The ombudsman's focus is on achieving some remedy for a complainant who has suffered an injustice as a result of maladministration and Mr E's concerns and complaints did not fall into that category.

6. Ombudsman decision – Not enough evidence of fault

Decision date – 29 March 2012

Ombudsman main subject area – Housing

Complaint

That the council did not give Ms F priority on the housing waiting list.

Background

Soha referred Ms F and her brother to the council in 2009. Their mother had relinquished a social tenancy and taken the younger children with her, leaving Ms F and her brother behind. At the time Ms F was 17 and her brother was 18. Initially they went to live with their grandparents in a sheltered scheme; however, the property was overcrowded and not suitable in the longer term.

Due to Ms F's age she was referred to social services who concluded that, rather than refer them into a supported housing projects, they should be housed together. As Ms F was under 18 at the time, Soha subsequently granted a tenancy in the brother's sole name.

Unfortunately, Ms F's brother caused a nuisance and did not pay rent and they were subsequently evicted. Ms F returned to her grandparents and stayed with friends.

When Ms F turned 18 her involvement with social services ceased and our officers continued to deal with her housing issues. As with all customers who are potentially homeless, officers sought to offset the necessity for a homeless application by placing Ms F in suitable alternative accommodation.

Ms F's wish to remain in Wallingford limited the scope of the assistance she was prepared to consider, including temporary accommodation offered to her. Officers made referrals to supported accommodation in Didcot and Abingdon but Ms F did not attend assessment meetings. Officers subsequently made several attempts to contact Ms F but received no response.

Although Ms F has renewed her housing application, she has not bid for any properties since February 2012.

Ombudsman's conclusion

The ombudsman said that the council had tried to help Ms F find temporary accommodation and that it was unfortunate that she was unwilling to attend assessment interviews. She did not consider there had been any administrative failings by the council.

Ms F had also complained that we had not given her housing priority. The ombudsman considered that we had dealt with Ms F's application in accordance with our housing policy and there was therefore no evidence of administrative fault.

There were therefore no grounds to pursue the complaint further.

7. Ombudsman decision – Not enough evidence of fault

Decision date – 27 February 2012

Ombudsman main subject area – Planning and development

Complaint

That the council failed to deal adequately with an application to insert two ground floor windows at a neighbouring property.

Background

Mr G's neighbour applied for planning permission to erect a two-storey side extension in February 2010. The proposed extension would face Mr G's rear garden and the rear elevation of his property. Mr G did not object to the proposal and permission was granted in April 2010.

During the construction of the extension, Mr G noticed that two ground floor windows had been added to the wall facing the rear elevation of his property. He contacted the planning service and discovered that officers had approved an amendment to the planning permission to include the windows in June 2010.

Mr G subsequently made a formal complaint, in October 2011. In the response to that complaint, officers explained that planning legislation allows applicants to alter a planning permission where the change does not materially alter the impact of the overall scheme. Officers further explained that they had considered the impact of the ground floor windows on Mr G's privacy to be limited as the windows were set behind a six foot close boarded fence. They added that the neighbours could have inserted ground floor windows after completion of the extension without the need for planning permission.

Mr G complained that he had not been given an opportunity to object to the amendment but there is no notification/consultation process required by legislation for non-material minor amendments. However, officers understood why Mr G felt aggrieved and reviewed their working practice in this area.

Ombudsman's conclusion

The ombudsman agreed that it would have been unreasonable to refuse permission to insert the windows during construction when permission would not have been required to insert them after the extension had been completed. Mr G felt that a non-material minor amendment should only be allowed where there is no impact on neighbour properties. However, the ombudsman pointed out that there is no statutory definition of "non material" and it was therefore for officers to decide whether the amendment was material. The ombudsman saw no evidence of fault in the way officers reached the decision that the amendment was not material.

The ombudsman acknowledged that Mr G disagreed with the council's view but did not see any scope to question officers' judgement and found no administrative fault in the way decisions were reached.

8. Ombudsman decision – No or minor injustice and other

Decision date – 3 May 2011

Ombudsman main subject area – Planning and building control

Complaint

That the council does not make it clear in letters notifying neighbours of a planning application that it is possible to ask a councillor to refer the application to the planning committee.

Background

This complaint is linked to complaint five above. Mr E contended that there is a lack of clarity and bias towards applicants in our planning process.

Councillors can, within 28 days of a planning application being registered, ask for an application to be referred to the planning committee for determination. This is to allow councillors to flag up any applications they have particular concerns about at a comparatively early stage in the application process. It normally applies to applications with a wider interest, rather than householder proposals.

Mr E's general concern was that this call in period required review because councillors are not always aware of the issues relating to planning applications within that 28 day period. He claimed that this was the case in relation to the application adjacent to his own property. Mr E also stated that this procedure should be highlighted in our neighbour notification letters.

Ombudsman's conclusions

The ombudsman said that it is for the council to decide on the information it provides. She added that the council should give information so that objectors know how they can go about making their comments, but she did not consider that the decision not to include details of the call-in procedure is so unreasonable as to amount to maladministration. She noted that, in the frequently asked questions section of the council's website, it referred to the fact that councillors can call in an application.

The ombudsman suggested that we reconsider whether to refer to the call-in procedure in neighbour notification letters, but added that this was a decision for us to make. Adding this reference would mean advising in excess of 10,000 residents a year of the call-in procedure and could lead to councillors receiving multiple requests for call-in. Senior officers took the view that this would be unmanageable and therefore decided not to include reference to the call-in procedure in neighbour notification letters.

9. Ombudsman decision – Injustice remedied during enquiries

Decision date – 19 July 2011

Ombudsman main subject area – Benefits and tax

Complaint

That the council did not award council tax benefit to Mr H's partner and did not handle his claim in a satisfactory manner.

Background

Mr H was a student and he and his partner made an application for housing and council tax benefit. The application was initially sent to a different local authority and we received the application in January 2011. Officers wrote to Mr H with their decision on 14 March, but, unfortunately, there were errors in that decision which were corrected on 24 March. Mr H subsequently lodged an appeal against that decision.

There was extensive correspondence between Mr H and officers, which culminated in a letter from the chief executive, dated 15 Jun 2011. In that letter the chief executive noted that Mr H had lodged an appeal with HM Courts and Tribunals Service, which is the correct route to follow. He accepted that we had not handled the claim as well as we might have done and apologised for that.

The ombudsman subsequently contacted us to suggest we pay Mr H £50 compensation in recognition of the shortcomings in our handling of his claim. Senior officers agreed to make that payment.

Ombudsman's conclusions

The ombudsman concluded that we had identified there may have been shortcomings in the way we handled this matter and apologised for our failings. She also noted that we had agreed to pay Mr H £50 compensation.

The ombudsman therefore did not consider there were grounds to pursue the complaint further.

10. Ombudsman decision – Injustice remedied during enquiries

Decision date – 1 December 2011

Ombudsman main subject area – Corporate and other services

Complaint

That the council failed to properly handle a complaint about Mrs I to its Standards Committee because:

- it failed to consider or deal with the issue of anonymous complainants and the reasons given for them in accordance with published guidance
- its assessment of the motivation for the complaint was flawed because easily available information was not provided to assessment panel members
- information relating to an earlier complaint that had been dismissed was resubmitted as part of the complaint and was investigated

- it failed to provide her with the page concerning the un-named complainants on page eight of the complaint form at the outset.

Background

This is a complex complaint relating to a standards committee issue. Details are attached in the ombudsman's statement of reasons attached at appendix three.