

OMBUDSMAN DECISIONS – 1 APRIL 2009 TO 31 MARCH 2010

1. Ombudsman decision – no maladministration

Decision date – 30 October 2009

Ombudsman main subject area - other

Complaint

That the council failed to take appropriate action to stop nuisance being caused to the complainant by her neighbour, in that it failed:

- to use its powers under the conveyance/transfer of the property which contains a restrictive covenant not to annoy or cause nuisance to neighbours
- to use its powers under the Town and Country Planning Acts requiring the property to be used solely for residential purposes and prevent or stop the use of the property for the repair of vehicles
- to use its powers under anti social behaviour legislation and environmental health legislation to abate a nuisance caused by fumes, noise and dirt caused by the carrying on of a vehicle repair trade in the garden of the neighbouring property and occasionally on the complainant's property.

Background

The complainant alleged that her neighbour was carrying out a car repair business from his home. She claimed we failed to use any of the powers at our disposal that are designed to enable us to reduce any noise nuisance, public health concerns, unauthorised planning activity or anti-social behaviour.

Planning enforcement officers monitored the site regularly and, between December 2007 and March 2009, found cars being worked on twice. The owner of the property, who advised that he was a mobile mechanic, admitted that he did work on some cars there. With this admission, the evidence of the two occasions planning enforcement officers witnessed motor vehicle repairs taking place and with the significant number of reports of motor vehicle repairs reported by the complainant, officers served a planning enforcement notice on 16 October 2008. This came into effect on 5 December 2008 and had to be complied with by 5 March 2009. Officers continued to monitor the property to ensure compliance was on-going. A resident of the property, who was one of the persons on whom the enforcement notice was served, contacted officers to advise that no commercial vehicle repairs had been carried out at the property since the end of 2008. Officers visited the site on 11, 19, 20, 24 and 30 March 2009 and, on each occasion, there was no vehicle repair activity at the site.

The complainant also made several complaints, dating back to 1999, of noise from a number of adjoining properties. However, the complainant refused to keep diary sheets, which are necessary for logging when the events occur and what degree of impact they are having upon her. As a result of this refusal to provide the evidence needed to pursue a nuisance complaint, officers were unable to take the matter further.

In addition, the anti-social behaviour team had considered the use of its powers relating to anti-social behaviour when a letter was passed to it in August 2008. It consulted through verbal, written and meetings with officers and found that there was a lack of evidence with any service team to prove persistence of nuisance.

Finally, we sold the neighbour's property by conveyance in 1984, which contained restrictive covenants, including one that stated that no trade or business could be carried out at the property or any part of the land, and that the land could not be used for anything other than a private dwelling house. The complainant claimed that officers could have used the content of that covenant as supportive evidence in taking action against vehicle repairs.

We transferred our housing stock to SOHA Housing on 07.07.97; all the properties that were subsequently sold by SOHA Housing carried the same restrictive covenants. We cannot enforce against these restrictive covenants as we no longer own or control the land. In fact, we do not have any property that can claim the benefit of that restrictive covenant.

The ombudsman's investigator concluded that there were no grounds on which he could challenge the procedure by which the council had considered using its powers and there was therefore nothing for him to pursue.

2. Ombudsman decision – no maladministration

Decision date – 30 July 2009

Ombudsman main subject area - other

Complaint

That the council failed to:

- use its various statutory powers to monitor and control the noise created from music at an open-air music festival
- have in place an effective system that residents could operate to alert the council to excessive levels of noise that would trigger observation by the council's environmental health officers
- have in place an effective monitoring system as envisaged by the presentation to the Licensing Committee
- inform residents on the change in criteria used to assess the noise levels
- monitor changes to the staging area and height at which noise was projected
- log complaints of excessive noise in 2007
- give examples of what level of noise would trigger monitoring by the council
- prevent the raising of the threshold of acceptable music noise
- maintain the previous methodology of 15 minute assessments
- maintain adequate and appropriate access to environmental health officers following a directive by the chief executive.

Background

This complaint relates to an open-air music festival that takes place opposite the complainant's property; the complainant submits a number of complaints about the festival each year. In view of the amount of officer time that was spent dealing with these complaints, the chief executive wrote to the complainant, on 03.07.06, advising that, in future, officers would carry out a desktop assessment of any complaint received from this complainant in relation to the music festival to decide:

- a) whether it was a new issue

b) whether the issue raised was a substantive one

Only if the complaint passed both tests would officers proceed to investigate it.

The main issues relating to this particular complaint are:

Noise Nuisance

The complainant alleged that our model for considering reports of noise nuisance at her home caused by the festival, effectively prevented officers from exercising their professional judgement and the council from exercising its whole range of powers, be they environmental health, planning controls or as licensing authority, to take action should there be an actionable noise nuisance or activity that breached planning or licence controls.

The ombudsman explained that it was not his role to establish whether a noise nuisance had or had not occurred but to be satisfied that the council had considered the information presented and officers had exercised their professional opinions on whether any of the activity could be controlled through planning or environmental health controls. He added that it was clear that officers would escalate their response to a report if they felt it demonstrated that the noise or disturbance the complainant had experienced was worse than the previous years during which officers had monitored or investigated the noise nuisance but found there was no actionable nuisance to pursue. He continued that officers had provided the complainant with examples of how that could be characterised and that those examples seemed reasonable.

New and substantive

Over the years, officers had investigated a number of noise nuisance complaints and carried out monitoring using sound recording equipment, but had not been able to establish that an actionable noise nuisance had occurred that would enable them to take action or seek to enforce licence conditions. Officers had explained that they would monitor new and substantive complaints that showed there was a greater probability of there being an actionable nuisance, and the ombudsman concluded that this was not so wholly unreasonable that he could take issue with it.

Recording at the festival

The complainant put forward a suggestion to the ombudsman, and to the council, that the council consider adopting a process used at other outdoor events, both electronically amplified and not, where a sound level is recorded at the point of the sound delivery (i.e. the stage) and at a point in the auditorium and that such levels are recorded for all performances. A level which is considered acceptable is set and anything above that level could be the subject of an investigation and possible action for noise nuisance. The ombudsman stated that was an option officers should consider and discuss with our own sound experts as part of our future consideration of the noise coming from the festival, but he could only recommend that officers consider using this if they believed it was appropriate and in the public interest.

Monitoring of the stage

Officers had noted, during inspections, that sets had some positions at different heights. In their professional view, the limited use of the higher parts of the set would not give rise to sustained, or frequent, high levels of noise disturbance that would be likely to constitute a noise nuisance. That did not mean it could not, but their view was that the results of previous monitoring, when it believed such levels

were in use, did not result in an actionable noise nuisance and so, on the balance of probabilities, it was unlikely this use would either.

The ombudsman stated that councils have to consider if any deviations from levels in staging are so significant that they warrant taking action, and that it was not simply that, if the company changed the staging levels, then enforcement action of some type must follow. He concluded that this view was not so wholly unreasonable that he could challenge it.

Licence conditions

The complainant referred to the licence conditions in this complaint and complaint number three below. The ombudsman's investigator had written to the complainant about that on 02.03.09. The investigator also wrote to the complainant on 18.05.09 explaining that, whilst the ombudsman's office had included the complainant's concerns in its enquiries to see what information on this issue it could obtain, the complainant had an alternative right of appeal against the decision not to review the licence conditions. This meant the ombudsman could not pursue the issues relating to the licence and, even if he could, his powers are limited whereas the Magistrates' Court could consider the merits of an application and make an order changing the licence conditions. That would achieve the outcome the complainant hoped for, assuming she was successful in an application to the court. It was not a matter the ombudsman could pursue for the complainant.

Conclusions

The ombudsman concluded that he was satisfied that the council did explain that all it needed from the complainant was information that demonstrated the noise experienced was greater than previously experienced which it did not find to be a noise nuisance.

He continued that officers provided examples and the model of desk top assessment had not prevented officers from exercising their professional judgement or from escalating their assessment to visits if they felt it was necessary.

As far as the alterations to the stage levels and their impact on the acoustic screen were concerned, the ombudsman said that it was clear that, in the council's view, no evidence had been presented that this resulted in a noise nuisance that officers could pursue, and therefore remained of the view that it was not sufficiently significant for officers to take action. The ombudsman stated that this was a view the council was entitled to take having considered what the complainant put forward and the views of its professional officers, and he could not arbitrate between those different viewpoints.

In view of the above, the ombudsman discontinued his investigation, as he did not find any evidence of maladministration or service failure causing an injustice.

3. Ombudsman decision – no maladministration

Decision date – 30 July 2009

Ombudsman main subject area – planning and building control

Complaint

That the council failed to properly consider using its powers of planning enforcement against breaches of planning conditions, giving rise to the licensing committee having no grounds for changing the licence conditions on its review and giving rise to loss of sleep and disturbance.

Background

This complaint refers to the same open-air music festival as the previous complaint. The complainant alleged that the council failed to take action:

- when the property was used for wedding receptions
- in response to complaints or reports that the music festival was operating outside the permitted days and the requirement that planning permission be sought.

Wedding receptions

The complainant contacted the council to complain that wedding receptions were held at the property opposite hers. The licensing team investigated this complaint and ascertained that the owner permitted friends, family and friends of the music festival to hold their wedding receptions at the property without obtaining a profitable fee. The information officers obtained indicated that two weddings were held there in 2006, one in 2007 and two in 2008. As officers were not made aware of these until after the events had taken place, they and were unable to witness any possible nuisance. Officers concluded that the weddings were private parties, and as such did not require a licence under the Licensing Act 2003.

Similarly, planning officers took the view that, as the wedding receptions were not public events, they were not subject to the planning conditions relating to the public use of the premises. They also considered that the use of the premises on such a small number of occasions per year did not constitute a material change of use of the property that required planning permission.

The ombudsman saw no reason to challenge the professional judgement of officers on what is or is not a material change of use and was satisfied that officers reached that judgement by considering all relevant material and having been guided by their own professional expertise and knowledge of decided case law and guidance on the matter. He concluded that the council had acted within the guidance to councils on the exercise of its enforcement powers and, in the absence of any evidence of maladministration, he was unable to pursue the matter further.

Breach of conditions

In order to protect local amenities, a condition was attached to the planning permission for the music festival that stated that the festival, including setting up and clearing away periods, should only take place within a consecutive 80 day period in each calendar year and that the setting up should not exceed 25 consecutive working weekdays. The complainant alleged that nine breaches of that condition had occurred during a 17 day period in 2007 but that planning enforcement officers failed to take any action. She further contended that this lack

of action left her with no evidence on which the Licensing Committee could base a review of the licence itself.

The ombudsman responded that it was clear that officers considered the breach of the condition of the planning permission and had spoken to the company to establish why work was undertaken outside the conditioned period. The company explained that work had been hampered by inclement weather and that some health and safety work had also had to be carried out. Officers were satisfied that the company had a valid reason for the breach and did not feel that, in all the circumstances, it was appropriate to take enforcement action. However, officers took the opportunity to remind the company of the need to comply with planning conditions.

The ombudsman concluded that the council had acted within the guidance to councils on the exercise of its enforcement powers and, in the absence of any evidence of maladministration, he was unable to pursue the matter further.

Licence conditions

The complainant contended that, when she requested a review of the licence, the Licensing Committee advised that nothing could be done because of the lack of evidence from the planning enforcement team.

The ombudsman stated that the licence objective that was important in this case was the protection from public nuisance. He continued that this was a wider test than that of statutory noise nuisance in that the council had to consider if there had been an adverse impact on a class of individuals and that it would be unreasonable to expect those individuals to pursue their own action. He stated that public nuisance was therefore more about the amenity of the area than an individual or individual property. He said that it did not seem wholly unreasonable to him for the licence to be based on the planning conditions attached to the planning permission, because they seek to protect the complainant's amenity and if they were breached to such an extent that enforcement action was required, that would demonstrate that the licence objectives had also been breached. He stated that it was for the licensing committee to decide if any further or more stringent conditions should be attached to the licence and that the fact the committee felt unable to review the licence because there had been no enforcement action, was not evidence of maladministration by the council. He therefore concluded that he had no grounds on which to pursue this matter.

Conclusion

The ombudsman concluded that he understood why the complainant felt the arrangements made and the action taken by the council were insufficient, inappropriate and lacking in vigour. However, he said that it seemed to him that the council was following the advice of its professional officers who considered the complainant's reports to them, made their own enquiries, exercised their professional expertise and reached a decision without maladministration. He therefore had no grounds on which to pursue the complaints, as he had not found evidence of maladministration or service failure causing injustice.

4. Ombudsman decision – no maladministration

Decision date – 23 June 2009

Ombudsman main subject area – planning and building control

Complaint

That the council granted permanent planning permission for access and a parking area without giving full consideration to the views of residents.

Background

The complainant lives next to an established sheltered housing complex for the elderly. In 2006 we granted planning permission for an extension to the building to provide an additional 14 flats. As work at the site would involve the temporary loss of some on site parking, the owners sought to provide an additional parking area on land residents used as a drying area. The drying racks were moved to a different position, leaving an empty concreted area. The owners applied for planning permission for the removal of part of the boundary fence and temporary use of the land for car parking, which was approved for a temporary period of two years from 11.01.07.

The parking area was used to a significant degree during the construction period and the fencing along the boundary was replaced by new fencing and gates were installed. When the construction work was completed, the owners decided to apply for permanent planning permission for the parking area. Officers registered this planning application on 22.12.08 and consulted the town council, neighbours and the highway authority.

Officers received objections from local residents, and the case officer asked the highway officer from OCC to take these objections into account when visiting the site to assess the merits of the proposal.

The highway officer confirmed he had no objection to the proposals. The town council also raised no objection to the proposals.

The ombudsman's investigator concluded that we had considered all the relevant matters in reaching our decision and there was no evidence of maladministration.

5. Ombudsman decision – no maladministration

Decision date – 20 April 2009

Ombudsman main subject area – planning

Complaints

The complainants' neighbours applied for planning permission for an extension very close to the boundary. The neighbours served notice on the complainants, who were out of the country at the time.

Background

Officers notified the complainants of the submission of the application by letter dated 29.10.07, and they made comments by letter dated 3.11.07. Planning permission was granted on 7.12.07. In September 2008 the complainants wrote expressing concerns about the development as the plans revealed "several shortcomings". A planning officer responded advising that notice had been served

on the complainants. In October 2008 the complainants claimed that, as they were abroad when the notice had been served, it had been knowingly and fraudulently completed and the planning permission was therefore invalid.

In the ombudsman investigator's view, we considered the planning application on its planning merits and we took the complainants' objections into account, but did not feel they were strong enough to warrant a refusal of the application. He therefore concluded that, in administrative terms, we reached our decision without maladministration and he therefore had no grounds on which to pursue the matter.

The investigator also concluded that the issue of whether or not the notice was fraudulent was a matter for the prosecuting authorities and not for the ombudsman, and he could not therefore pursue it.

6. Ombudsman decision – no maladministration

Decision date – 5 May 2009

Ombudsman main subject area – planning and building control

Complaint

That the council failed to properly consider all aspects of the complainants' neighbour's planning application and the impact the new access would have on their ability to use their existing access safely and did not take into account their objections to the access on highway safety grounds leading to the creation of what they consider to be a dangerous access, impacting on their amenity and safety.

Background

We received a planning application for a property opposite the complainants' home, which sought the construction of a new access; electronically operated wooden gates formed part of the proposal. Prior to this application, the property shared a private access drive with two other detached properties.

The complainants objected to the proposals, and the planning officer discussed their concerns with the highway officer; however, they concluded that there were no restrictions on a new access being directly opposite an existing access if adequate visibility splays could be provided and the gates were set far enough back from the pavement to ensure no vehicle using the access obstructed pedestrians. The highway officer considered that the presence of speed cushions or humps along the relevant stretch of the road meant that sufficient measures were already in place to reduce vehicles speeds and prevent excessive speeding.

Officers subsequently received a second, retrospective, planning application to amend the position for the gates. These had been constructed outside the root protection area of a nearby tree contrary to the approved plans. This second application did not propose any alterations to the access itself, (the subject of this complaint). Officers did not receive any objections to this second application.

In the complainants' view, officers failed to take note of the true situation, as they saw it, and the traffic calming measures officers took into account did not work sufficiently well to make the new access acceptable. They argued that they had a wealth of experience of using their accessway and the dangers the speed of the traffic presented. In view of their concerns officers sought an amendment to the planning application to ensure that a visibility splay was provided with sufficient room for a car to be off the road while gaining access or egress from the new accessway. In the view of the ombudsman's investigator, this demonstrated that

officers did consider the complainants' objections and, where officers felt it appropriate on the basis of their view of the merits of the application, officers obtained amendments to address those objections.

The investigator concluded that officers had followed the correct procedure and, in the absence of any administrative fault or error in that procedure he had no grounds on which to pursue the complaint and discontinued his investigation.

7. Ombudsman decision – no maladministration

Decision date – 5 May 2009

Ombudsman main subject area – planning and building control

Complaint

That councillors granted planning permission:

- in the face of a strong recommendation against the application by the planning officer
- in the knowledge that the development contravened local plan policies
- for a change of use that would cause an injustice to the complainant.

Background

We received a planning application for the change of use of a building near the complainant's home from A1 (shop) to A3 (restaurant), plus an extension to the roof to incorporate a plant room, associated alterations to the building and new signage. The complainant objected to the application.

Planning Committee considered the application on 08.10.08; the planning officer recommended that the application be refused, but councillors resolved to grant planning permission.

The complainant contended that members of the Planning Committee did not debate the planning officer's report fully before reaching their decision.

The ombudsman's investigator stated that this was a very controversial decision, clearly opposed by many people, who were supported by some officers and the ward councillor. However, he continued that other councillors had felt differently and decided the permission could be granted with appropriate conditions. He said that, whilst he appreciated the very strong arguments made against the grant of planning permission, he was satisfied councillors had all relevant information before them on which to base their decision and that they had reasons for that that decision.

He concluded that the decision was made without maladministration and he was therefore unable to pursue the matter further.

8. Ombudsman decision – no maladministration

Decision date – 6 August 2009

Ombudsman main subject area – planning and building control

Complaint

That the council failed to:

- properly notify the complainants and the parish council of a retrospective planning application to regularise an unauthorised larger window in the neighbour's property
- failed to properly consider the impact of the window on the complainants' amenity when reaching a decision.

Background

The complainants alleged that:

- the enforcement officer did not do their job responsibly
- the planning officer did not consider relevant papers
- the planning process was rushed and was not properly posted
- they were not given the opportunity to be represented at site meetings
- officers did not give a realistic response time frame
- the council has misled the complainants and the parish council, by allowing drawings to be submitted which did not represent the situation
- they felt aggrieved that the council considered no significant increase in overlooking of their private amenity space
- the number of errors and omissions should constitute a review of the planning decision.

The complainants wrote to the planning enforcement team on 03.11.08 about a first floor window their neighbours had inserted in the side elevation overlooking their property. On 07.11.08 the neighbours submitted a planning application for an extension and alterations. The drawings submitted with this application included the window the subject of the enforcement complaint, indicating (by style of the drawing) that it was an existing window. It appeared that the applicant had enlarged the original window to form that shown in the application, perhaps not being aware of recent changes in planning legislation (01.10.08) that meant such a new side, non obscured, opening window required planning permission.

The planning and enforcement officers discussed this in order to resolve, in the most appropriate way, the breach of planning. In accordance with normal working practice, the applicant then revised the planning application to seek to regularise the breach of planning (i.e. the insertion of the window). So, in effect, the planning application, as amended, superseded the enforcement investigation.

Whilst the enforcement officer did not visit the site, the planning officer did visit the site on two occasions to assess the application and the impact of this window. Although the planning officer did not visit the complainants' property, photographs the complainant had provided were used to aid the site visit assessment.

The complainants' letter of 03.11.08 was not included within the planning application because that letter was received through the planning enforcement

process, and current planning enforcement cases are kept confidential, and, indeed, the complainants requested that such information remained confidential.

The enforcement officer advised the complainants by email that the planning application had been amended and that they had an opportunity to make representations, which would be held on the public file. The complainants subsequently made an objection through their agent.

The complainants claim that the planning process was rushed, but the application was determined in accordance with our working practice, which reflects the Government's target to determine planning applications within eight weeks, and where possible we will determine earlier. As with all applications, this application provided the local community with 21 days to comment on the original proposal. Following that, officers received amended plans and an email highlighting the inclusion of the first floor window on the south-east elevation. Officers then notified neighbours and the parish council and provided them with a further 14 days within which to respond to the amended scheme. Following this re-consultation, officers received a letter of objection from the complainants on 17.12.08 indicating their concerns; officers also received comments from the parish council on 18.12.08. Subsequently, when considering the merits of this application, the planning officer took into account the concerns and views raised in that correspondence. The planning permission was issued on 24.12.08. At this point the public consultation period had expired and consultation responses from both the complainants and the parish council had been received and taken into account.

The ombudsman's investigator could not find any administrative fault in the way the council had dealt with this case and therefore discontinued his investigation.

9. Ombudsman decision – no maladministration

Decision date – 28 August 2009

Ombudsman main subject area – planning and building control

Complaint

That the council failed to properly enforce planning controls and allowed the operators of an airfield to intensify this use beyond the terms of the Certificate of Lawful Use or Development, which itself was found to be unclear, hampering any attempts to enforce its conditions resulting in the complainant experiencing far more intense flying and associated activity at the airfield.

Background

The complainant lives near a landing strip, which was granted a Certificate of Lawful Use or Development (CLUED) in 2001 for the recreational flying only for private aircraft. A CLUED is not a planning permission with conditions but confirms the legal use of land on a certain date and acts as a point of reference against which to assess potential changes.

In January 2007 nearby residents contacted the planning enforcement team making a number of allegations about breaches of planning control associated with the airfield and claiming that the airfield was being operated in a manner that went beyond that confirmed as being lawful in the CLUED. The main allegations were:

- increase in number of permanent landing strips outside the blue edged area on the CLUED
- aircraft in excess of 450 kilograms landing and taking off
- gliders using airfield
- helicopters using airfield
- change of use of agricultural building to clubhouse
- gyrocopters using airfield (rotor aircraft are excluded from definition of microlights (CAA))
- number of flying days has substantially increased (135 days recorded in 2007)
- works to the buildings
- change of use of building to aircraft hanger
- development of club facilities
- mobile home next to the barn
- derelict aircraft on airfield
- windsock
- use of land by hot air balloons
- aircraft movements at anti-social hours.

The test officers had to apply in this case was not whether the use of the land for flying had intensified, but whether that intensification in the use amounted to a material change of use. Officers considered that, although the number of flying days may have increased and the type of aircraft changed, the use had not changed materially from that in operation when the CLUED was granted. In their view, the use of the land remained as "recreational flying only for private aircraft". They therefore concluded there had been no breach of planning control in this respect, but that they would review the matter after 12 months.

As far as the additional runways were concerned, officers considered that the cross runway and additional parallel runway were within the area for which the CLUED had been granted and their use did not constitute a breach of planning control. They also considered that any extension of runway use outside the certificate area did not in itself result in a material change of use requiring planning permission as such use benefited from permitted development rights which allow the use on not more than 28 days per calendar year. However, officers resolved to review this after three months and, if there was evidence that the land had been used in excess of 28 days, they would pursue enforcement action.

Turning to the buildings, officers considered that the use of a Dutch barn for storage of aircraft, as a mess room and office was likely to constitute a change of use requiring planning permission. However, they did not consider it expedient to pursue enforcement action against those uses.

The shipping containers and a viewing platform attached to the Dutch barn building had been on site in excess of four years and were therefore immune from enforcement action.

The use of the land for the stationing of a mobile home for residential purposes required planning permission against which officers resolved to pursue enforcement action.

The complainant contended that officers' investigations were inadequate and that the council should arrange for a further review by an independent investigator.

Prior to reaching a decision, the ombudsman's investigator wrote to us suggesting that we seek counsel's opinion on this case. As planning officers had sought and acted on advice from our in-house lawyer, and as there was no evidence to indicate, and no implication by the investigator, this advice was manifestly incorrect or inadequately thought through, officers concluded that there was no sound reason why we should go to the time and expense of instructing counsel on the matters raised by the complainant. However, officers did not rule out the possibility of seeking advice from a barrister on some or other legal issue raised by this case in the future.

In his decision letter, the ombudsman's investigator advised that the ombudsman was disappointed that the council had declined to put this matter to counsel. However, he added that this decision did not meet the threshold of maladministration because officers had not ruled it out altogether. He recommended that officers should make a decision on whether or not they were going to take further enforcement action within four months of the date of his decision.

In conclusion, he found no maladministration and closed the investigation.

Since that decision letter, officers have concluded that enforcement action is appropriate and sought counsel's opinion on the most appropriate approach. On 17.05.10 they issued an enforcement notice alleging the following breach of planning control:

"Without planning permission, the material change of use of the land from an agricultural use to a mixed use for agricultural and recreational flying including taking off and landing of aircraft."

The notice came into effect on 24.06.10 and required that, by the end of six months from that date, the owner of the site must stop using any part of the land for recreational flying, including the taking off and landing of aircraft and remove from the land all aircraft and associated equipment brought on to the land for the purpose of its use for recreational flying.

The owner of the land appealed against the enforcement notice on 01.07.10 and the planning inspectorate will consider that appeal at a hearing scheduled to take place on 06.01.11.

10.Ombudsman decision – no maladministration

Decision date – 7 September 2009

Ombudsman main subject area – planning and building control

Complaint

That the council granted planning permission without investigation of the site.

Background

Planning permission was granted for four houses on land to the rear of the complainant's property in 2006. During the course of construction investigations revealed that the slab levels on three of the plots, and some surrounding land levels, were higher than those approved. The developers submitted a new application to regularise the breach of planning control and to include alterations to some fenestration details; Planning Committee approved this revised application on 28.01.09.

The complainant alleged that officers did not view the site from her property and, as a result, her property was now overlooked. However, a planning officer visited the complainant's property on 04.10.06, but was told that it was not convenient to view the site from her property at that time. A planning officer visited the complainant's property again on 25.09.08 and, on 16.01.09, visited the development site, including climbing the scaffolding to assess views at height; members of the Planning Committee also visited the site at that time.

The complainant also contended that a land drain was not installed thereby causing flooding of her garden. However, one of the conditions of the planning permission required the carrying out of drainage works to an approved standard prior to the occupation of the dwelling.

The ombudsman's investigator stated that, whilst she understood why the complainant was so unhappy about the new development and the increased height, she did not consider that there was maladministration in how the council reached the decision to grant planning permission and she therefore discontinued her investigation.

11. Ombudsman decision – no maladministration

Decision date – 25 November 2009

Ombudsman main subject area – planning and building control

Complaint

That the council failed to:

- properly consider a planning application submitted by the complainant's neighbour by not requiring accurate plans, allowing the building to come to within an unreasonably close distance of the complainant's property
- take enforcement action to remedy the unauthorised roof styles and windows.

Background

The complainant's neighbour submitted two planning applications, one for two-storey extensions and another for a conservatory and porch.

Officers requested amendments to the application for the two-storey extensions so that the shape of the extension to the north was revised to reflect the existing gable and was also significantly reduced in size to the side. In addition, a proposed window in the east facing elevation was removed and replaced by a corner bay window. Officers visited the site, and the complainant's property, and concluded that the amendments to the scheme addressed the concerns they had about the level of overlooking the scheme would have on the complainant and recommended approval of the scheme.

Officers subsequently received complaints that:

- a window had been inserted in the east elevation
- a two storey projecting bay had been constructed with a flat rather than a pitched roof
- a tree house had been erected.

A planning officer visited the site and noted that:

- a small, round window had been inserted in the east elevation and could be clearly seen from the complainant's property; however, the window was so high that it was apparent no overlooking could occur
- the two storey extension, which on the approved drawings was shown to have a pitched roof, had been constructed with a flat roof as there were problems with tying a pitched roof over this area into the other roofs. The owners advised that the structure was a temporary solution and the planning officer discussed with them a way of finishing off the roof in a manner more in keeping with the overall design of the property.

The officer encouraged the owners to submit a retrospective planning application to regularise these two breaches of planning control, which they indicated they would do. The officer concluded that it was not expedient to pursue the enforcement investigation and therefore closed the file.

We cannot require someone to submit an application for retrospective planning permission. In these particular circumstances, as officers considered that it was not expedient to pursue these breaches of planning control and consequently did not pursue a retrospective planning application.

The officer also noted that the tree house had been erected within 20 metres of the highway and therefore required planning permission. However, the officer considered that it was low-key, and adjacent to the village so did not result in any problems of children overlooking private gardens. The officer concluded that it was not expedient to take any action against this structure.

In response to further enquiries by the ombudsman's investigator, officers carried out a further review of the closure of the enforcement investigation by referring the file to a fresh officer with no previous knowledge of the matter. That officer reached the same conclusion, i.e. that, in the officer's professional view, there were insufficient grounds for pursuing an enforcement action.

The ombudsman's investigator concluded that he had no grounds on which to challenge the council's decision and therefore closed his investigation.

12.Ombudsman decision – ombudsman's discretion

Decision date – 29 January 2010

Ombudsman main subject area – housing benefit

Complaint

That the council:

- pursued a housing benefit fraud investigation against the complainant
- delayed in determining a benefit claim and required an unreasonable amount of information before it would determine the claim.

Background

The council received a complaint from a person in respect of matters that arose from his claim for housing benefit. The acting assistant ombudsman decided not to uphold the complaint and closed the investigation, but highlighted three areas where he believed the council could have either acted differently, or improved the manner in which it conducted matters. In response officers wrote to the ombudsman's investigator and disagreed with two of the recommendations but accepted the third. The investigator responded to confirm that she was now aware that the complainant had been informed of his right of appeal against the determination of his housing benefit claim. She also noted the actions taken by the council regarding its prosecution policy and how it will offer cautions.

13.Ombudsman decision – ombudsman's discretion

Decision date – 8 September 2009

Ombudsman main subject area – environmental protection

Complaint

That the council failed to:

- collect the complainant's refuse
- to have adequate systems in place to ensure residents could contact the council with any queries.

Background

This complaint was received following the introduction of the new waste collection service. Our contractors failed to collect the complainant's refuse on 10.06.09. The complainant made several attempts to contact us by telephone to report the non-collection, but was unable to get through; he therefore visited the offices in person. The complainant contended that, because we did not have adequate systems in place, we reimburse his costs.

It is a fact that, when the new collection service was introduced, both Verdant's and our switchboards were unable to cope with the volume of calls that we were receiving at certain times of the day. However, we subsequently brought in additional resources to help alleviate this short-term problem.

The ombudsman's investigator concluded that the council had failed to ensure it had adequate contingency plans in place but that we had reviewed the systems we had in place, apologised to the complainant his collected his refuse. He added that the council had considered reimbursing the complainant's costs but had concluded that the costs of this would outweigh the benefits.

In conclusion, the investigator considered that the ombudsman would be unlikely to recommend that the council took any further action and therefore closed the investigation.

14.Ombudsman decision – ombudsman's discretion

Decision date – 21 April 2009

Ombudsman main subject area – transport and highways

Complaint

That:

- the council made a Street Parking Places Order which contained errors
- the order is therefore not legally valid and the council is acting unlawfully and unreasonably in pursuing notices issued under that Order
- that the council did not follow its published complaints procedure
- that the council, at the third stage of the complaints procedure, introduced a delay in putting the matters to councillors by referring the matter for expert legal advice.

Background

- The first two parts of the complaint relate to the complainant's claim that our Off Street Parking Places) Order 2008 was badly drafted and did not comply with the requirements of the Road Traffic Regulation Act 1984.

The Act requires us to seek OCC's consent to the order, which officers did by letter dated 14.01.08. However, the letter stated "The proposed amendments to the existing order are as follows" The complainant claimed that OCC had therefore only given consent for the amendments, not the order itself. He also claimed that the newspaper notice was invalid because:

- it did not give an explanation of the different ways in which excess charges would be applied
- it failed to make it clear there would be no reduction for early payment of the further excess charge.

For these reasons, the complainant contended that the order was invalid and that we were acting unlawfully by using provisions in the order to make charges and issue excess charges at our car parks.

- The third and fourth parts of the complaint relate to our complaints process.

The complainant lodged a formal complaint under our complaints procedure. The head of legal and democratic services responded under stage one, and the strategic director under stage two. He was not happy with either response and wrote to the chief executive asking for the complaint to be considered under stage three, and the chief executive's PA acknowledged receipt, on 05.01.09, using the standard wording, i.e:

"At stage three the chief executive will decide if there is merit in referring your complaint to a panel of councillors. He will therefore review the background and respond to you within ten working days."

Having looked at the background documents, the chief executive decided to seek counsel's opinion before responding. In the complainant's view this did not form part of our complaints procedure and delayed the process unnecessarily.

The ombudsman's investigator concluded that there were errors in the procedure we followed to adopt the order, because:

- we failed to ensure the newspaper notice gave an explanation of the different ways in which excess charges would be applied
- we failed to make it clear there would be no reduction for early payment of the further excess charge.

However, the investigator considered that these did not invalidate the order itself or cause the complainant direct injustice. He also stated that the consultation with counsel was action which remedied the complaint and therefore discontinued the investigation.

15.Ombudsman decision – outside jurisdiction

Decision date – 29 October 2009

Ombudsman main subject area – planning and building control

Complaint

That the council:

- delayed in the grant of the planning permission
- has increased the costs of the Section 106 Agreement
- caused the complainant to incur unnecessary legal and planning agent expenses
- continued to delay the matter by not resolving issues regarding to conditions or outstanding matters.

Background

By law, where a person making a complaint has the right to appeal to a government minister, and the ombudsman believes it is reasonable for the complainant to exercise that right, the ombudsman may not pursue the complaint. In this case, the complainant had the right to appeal to the Secretary of State for non determination of the planning application.