

The Ombudsman's final decision

Summary: Mr X complains about delay and poor communication by the Council in relation to enforcement action against an unauthorised development at a neighbouring property. The Council has already accepted fault, apologised to Mr X and made some service improvements. The Council has agreed to our recommendations to remedy the injustice this caused Mr X.

The complaint

1. Mr X complains about delay by the Council in taking enforcement action against unauthorised development on green belt land and dog training activity at his neighbour's property. Mr X also complains about poor communication about these matters.
2. Mr X says this has affected his family's wellbeing and enjoyment of their home and garden during the summer months and they suffered nuisance and noise from his neighbour's dogs as a result. Mr X says he could not leave his children alone in the garden for the fear of being attacked and, working from home was extremely difficult due to noise and disturbances. Mr X says he has been driven out of his home which he has lived in for the past nine years.

The Ombudsman's role and powers

3. 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*)
4. If we are satisfied with an organisation'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*)

How I considered this complaint

5. I spoke to Mr X and considered the information he sent me. I considered the Council's response to Mr X's complaints.
6. Mr X and the Council had the opportunity to comment on my draft decision. I carefully considered any comments I received before making my final decision.

What I found

Law, Guidance and Local Policy

7. Councils can take enforcement action if they find planning rules have been breached. However, councils should not take enforcement action there has been a breach of planning control.
8. Planning enforcement is discretionary and formal action should happen only when it would be a proportionate response to the breach. When deciding whether to enforce, councils should consider the likely impact of harm to the public and whether they might grant approval if they were to receive an application for the development or use. Government guidance encourages councils to resolve issues through negotiation and dialogue with developers.
9. Government guidance says: “Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.” (National Planning Policy Framework July 2021, paragraph 59)
10. The Council’s planning enforcement policy says priority two breaches will be investigated within five working days and the site will be visited. A priority two breach is defined as “unauthorised development which threatens limited harm”. The policy says that following the visit the complainant will be advised if a breach of planning control has been established and if so, what action the Council will take.

Statutory nuisance

11. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take reasonable steps to investigate potential ‘statutory nuisances’. A statutory nuisance may include noise from premises and smells from industry, trade or business premises. To be a ‘statutory nuisance’, the matter complained about must:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises; and/ or
 - injure health or be likely to injure health.
12. There is no fixed point at which something becomes a statutory nuisance. Councils will rely on suitably qualified officers to gather and assess the evidence. Officers will consider factors such as the timing, duration, and intensity of the alleged nuisance and use their professional judgement to decide whether a statutory nuisance exists.

What happened

13. What follows is a brief chronology. It is not necessary for me to detail everything that happened here. I have set out the key events.
14. In January 2021 Mr X contacted the Council about a breach of planning control by his neighbour. He complained about unauthorised development on green belt land and dog training activity at his neighbour’s property.
15. The Planning Enforcement Team (‘PET’) promptly responded to Mr X with details of the planning permission it had granted to the neighbour. Mr X responded and said work undertaken by his neighbour was outside the scope of agreed planning permission.

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16. Mr X did not receive a response from the PET. He wrote again on 14 February 2021 and repeated his concerns.
 17. Around the same time the Council told Mr X the Environmental Health Team ('EHT') was investigating his complaint about noise levels. Mr X was asked to record the frequency and level of noise on diary sheets provided. Mr X sent completed diary sheets to the EHT in early March 2021 and requested an update. Mr X was informed the EHT was contacting his neighbour about the level of noise.
 18. On 22 March 2021 Mr X contacted the PET again chasing a response to his email about work undertaken by the neighbour. The PET said it was arranging a site visit and explained that a high profile case was taking precedence.
 19. On 21 April 2021 Mr X contacted the PET by telephone and email requesting an update on the site visit and investigation into his concerns. The PET responded the next day and explained that no site visit had been undertaken due to difficulties in gaining access.
 20. On 6 May 2021 Mr X contacted the PET again for an update. In response to Mr X the PET said it had not agreed to a site visit and Mr X's neighbour was normalising the buildings and had requested retrospective planning permission.
 21. A week later the EHT served a notice to Mr X's neighbour and said the dog training activity had ceased. Mr X said it had not.
 22. On 16 May 2021 Mr X complained to the Council about lack of planning enforcement and lack of effective communication.
 23. The next day Mrs X was informed the notice served by the EHT could not be enforced. This was because another local authority (Council B) was responsible for investigating the noise nuisance. This part of Mr X's complaint was transferred to Council B on 24 May 2021.
 24. On 2 June 2021 the PET told Mr X that it would contact him on 10 June 2021 with an update. The Council did not contact Mr X.
 25. On 7 June 2021 Mr X chased the Council for a response to his stage one complaint. The Council apologised for the delay and said it would respond to Mr X's complaint in 10 days.
 26. Three weeks later Mr X contacted the PET again requesting an update. He was informed the Council was seeking authority to take formal action against his neighbour.
 27. On 18 June 2021 the Council responded to Mr X's complaint at stage one of its complaints procedure. Mr X was not satisfied with the response and on 18 July 2021 asked for his complaint to be escalated to stage two.
 28. Mr X chased the Council for a response to his stage two complaint in August, October, November 2021 and January 2022.
 29. On 28 January 2022 the Council sent a stage two response to Mr X. It said:
 - It should have explained to Mr X that due to the Covid-19 pandemic the Council was facing exceptional circumstances, and this was impacting its resources. That consideration should have been given to the possible re-allocation of resources to relevant enforcement cases;
 - The Council did not consider the concerns raised by Mr X in January 2021 to be a planning breach and enforcement action was not pursued. The Council accepts that it failed to inform Mr X of its decision:

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- The Council's view changed in February 2021 when the Council became aware that buildings were being erected on the site. There was a delay in progressing the case due to staff absence. The Council acknowledged this should not have caused a delay to all work on this case;
 - There were some delays in the progressing enforcement action. However, there are also legally required periods of time for 'notice' to take effect or be 'complied' with:
 - There was a delay in dealing with the noise nuisance due to issues in determining which Council was responsible for investigating the nuisance and issuing the notice;
 - The first site visit was delayed due to another high priority enforcement case but also partially caused by lack of co-operation by the landowner;
 - The site visit in August 2021 identified that the dog training activity had not ceased;
 - A further site visit in October 2021 confirmed the dog training activity had stopped and building structures had largely been removed;
 - The Council should have been a lot more responsive to Mr X's enquiries and that better management of resources would have helped improve its response times; and
 - The Council had failed to respond to his complaint in good time.
30. The Council apologised to Mr X for the delays and poor communication he experienced in its handling of this case. The Council said it had made a number of changes to its procedures as a result including a website page to provide an update to residents in relation to all key enforcement cases. In addition, Mr X's complaint had identified an important technical issue with regards to noise complaints which should prevent a similar problem occurring again.

Analysis

31. As explained above, the Council has accepted it was at fault for some of the delays in progressing enforcement action. The Council accepts that it failed to respond to Mr X's enquiries in a timely manner. The Council also accepts that there was a delay in responding to Mr X's complaint at stage one and stage two. These faults represent service failure.
32. Because the Council has accepted fault it is not necessary for me to investigate the issues of complaint further. However, I must consider whether an apology offered by the Council and the service improvements highlighted are sufficient to remedy any injustice caused by the delay. Mr X told me he appreciates the Council identified its shortcomings but did not feel this was enough. I agree.
33. The Council accepts that in February 2021 it should have progressed an investigation into the concerns raised by Mr X. A satisfactory conclusion on this case was not reached until October 2021 when the site visit confirmed the dog training had ceased and building structures largely removed. I acknowledge the Council's comments that some delay was rightly due to legally stipulated timeframes. In addition, it took the Council over six months to respond to Mr X's stage two complaint.
34. There is no doubt this period was challenging and frustrating for Mr X and his family and impacted their well-being and quality of life. The delays and lack of effective and timely communication caused significant distress, uncertainty and added to Mr X's frustrations. Mr X was also put to unnecessary time and trouble pursuing the Council for a response to his enquiries and his complaints.

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35. I welcome the service improvements identified by the Council in its stage two response and action it has taken to address learning from this complaint.
36. Where we find an injustice, we try in our remedy proposals to place people in the place they would have been but for the faults. Where that is not possible, we use our Guidance on Remedies which recommends a symbolic payment on a scale of between £100 and £300 in recognition of the injustice caused.

Agreed action

37. To address the injustice caused, within one month of my final decision the Council agrees to:
- Pay Mr X £300 in recognition of the avoidable distress and uncertainty caused by delays and poor communication;
 - Pay Mr X £150 for the time and trouble in pursuing his complaint; and
 - Ensure that staff are reminded of the importance of adhering to timescales when responding to a complaint and where delays occur complainants are kept informed.
38. Within two months of my final decision the Council agrees to:
- Provide the Ombudsman with a copy of its revised procedure for handling complaints about noise nuisance, specifically addressing the technical issue highlighted with Council B.

Final decision

39. I have completed my investigation finding fault by the Council causing injustice to Mr X.

Investigator's decision on behalf of the Ombudsman