

## **The Ombudsman's final decision**

Summary: Mr X complained about the Council's role in approving and assessing a neighbouring property's building work. We found the Council to be at fault. Mr X suffered undue time and trouble. The Council should apologise to Mr X and make a symbolic payment to him. The Council should arrange relevant training for its staff.

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## **The complaint**

1. Mr X complained about a development at a neighbouring property. He complained about several things including the size and the use.
2. Mr X said he worried about fire safety because of the standard of the build being poor.

## **The Ombudsman's role and powers**

3. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word fault to refer to these. We consider whether there was fault in the way an organisation made its decision. If there was no fault in how the organisation made its decision, we cannot question the outcome. (Local Government Act 1974, section 34(3), as amended)
5. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (Local Government Act 1974, section 26(6)(c), as amended)
6. When considering complaints we make findings based on the balance of probabilities. This means that we look at the available relevant evidence and decide what was more likely to have happened.
7. 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)

## **What I have and have not investigated**

8. I have investigated how the Council reached its decisions and how it responded to Mr X's complaint.

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9. I have not investigated matters about personal damages to Mr X's property, caused by building work. The Ombudsman do not award damages like a court would. Mr X may wish to consider private legal action to address this.
  10. I have not investigated matters relating to building safety regulations. Mr X is not responsible for ensuring compliance with building safety regulations for his neighbour, Mr Y's, property.
  11. The law prevents me from investigating matters relating to water or sewage.

## **How I considered this complaint**

12. I considered the complaint and information provided by Mr X and the Council.
13. Mr X and the Council had the opportunity to comment on the draft decision. I considered any comments before making a final decision.

## **What I found**

### **Law and guidance**

14. A dwelling house is the term used to refer to a building which people live in.
15. Not all development needs planning permission from local planning authorities. Certain developments are deemed permitted, providing they fall within limits set within regulations. This type of development is known as 'permitted development'.
16. It is possible to seek formal confirmation from councils that an existing or proposed development or use of land is lawful and so needs no planning permission. If the Council accepts the evidence provided, it can issue a certificate of lawful use to the applicant.
17. This may happen where:
  - the Council has already granted planning permission for the use or development;
  - a development is 'permitted development' and so considered acceptable because it complies with limits in regulations;
  - the development was unlawful, but the time limit for enforcement actions has now passed.
18. An Article 4 direction explains the powers available to a Council to remove or restrict one or more permitted development rights from an area. If an Article 4 direction is in place, a resident must apply for planning permission, when making changes to their home, Town and Country Planning (General Permitted Development) (England) Order 2015.
19. An Article 4 direction might be used to protect a conservation area or to restrict change of use of a building.
20. Planning uses of land or 'use classes' are set out in regulations. They cover a range of typical uses, like residential, business, industrial and commercial.
21. Planning permission is usually needed to change a use from one class to another. Whether a change of use has occurred is a matter of 'fact and degree' for the Council to decide.
22. Class E refers to buildings and other development within the curtilage (area / plot of land) of an existing property, The Town and Country Planning (General

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Permitted Development) (England) Order 2015. This is relevant to the outbuilding Mr Y built in his garden.

23. The government guidance, Permitted development rights for householders: technical guidance, 2016, provides direction to homeowners wanting to make changes to their properties. The terms ancillary and incidental are used in the guidance. They refer to the use of a building.
24. There are rules in place about building class E outbuildings. The rules say the outbuilding must be incidental to the main home. A garage or office is likely to be incidental, but an extra bathroom, or bedroom is likely ancillary. Usually, self-contained residential accommodation would be ancillary to the main home.
25. Councils may impose Tree Preservation Orders (TPO) to trees, groups of trees or woodland to protect them. They may control works on trees, such as:
  - Cutting down;
  - Topping;
  - Lopping;
  - Uprooting; and
  - Willful damage and destruction.

### **What happened**

26. Mr X's neighbour, Mr Y, applied for a certificate of lawful use for a development he intended to make to his property.
27. Mr X objected to the plans. Mr X said the property was in a conservation area. He also said:
  - an Article 4 direction was in force,
  - the proposed development was too big,
  - the intended use of the building was unlawful, and
  - the drawings given to the Council were inaccurate.
28. The Council issued a certificate of lawful use to Mr Y. Mr Y's building work started.
29. Mr X made a formal complaint to the Council. Mr X complained about a lack of consultation about the building work, and about the Council approving the work based on inaccurate drawings. Mr X also said he was worried about a tree being damaged.
30. The Council made a stage one complaint response to Mr X in April 2024.
31. The Council said:
  - because Mr Y's application was for a certificate of lawful use of development, and not planning permission, neighbours did not have to be consulted,
  - it would follow the necessary process should the tree in the neighbouring garden need protection (and explained about a tree preservation order), and
  - any damage done to Mr X's property was a private matter between him and Mr Y.
32. Mr X escalated the complaint to stage two. Mr X was unhappy about many parts of the building work and the Council's lack of action.

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33. The Council made a stage two complaint response in June 2024. It explained more about how Mr Y's work was permitted development. It said a Planning Enforcement Officer visited the building site to check the development in response to Mr X's first complaint. Despite changes to the original plans the Council said the work was permitted development. The Council told Mr X its building control team were checking compliance with regulations. It also commented on Mr X's concerns about a tree. The Planning Enforcement Officer reviewed the tree, when visiting the site. The Council said the tree was away from the building work. The Council also reiterated the alternative of a tree preservation order, if relevant. The Council signposted Mr X to the local water company to discuss matters about sewage.
  34. Mr X continued to complain to the Council. Mr X complained about the closeness of the building works to neighbouring properties and fire safety. He also complained about the Council approving plans with wrong measurements, and what Mr Y was using the development for.
  35. A Council Director made a further stage two response to Mr X in July 2024. It said the Council's building control team were inspecting the development to ensure compliance with building control rules. This included considerations about fire safety. The Council reiterated its role in considering an application for a certificate of lawful use compared to considering an application for planning permission. It explained the Planning Enforcement Officer's role in inspecting the development and its intended use.
  36. Shortly after, Mr X complained to the Ombudsman and the Building Safety Regulator.

### **My findings**

37. The Council granted a certificate of lawful use for development to Mr Y. The Council said the changes Mr Y wanted to make to his property would be classed as permitted development. This meant he did not have to make a formal planning application.
38. An Article 4 direction is in place covering Mr Y's property. This removes the permitted development rights from Mr Y's property. At the time the Council issued the certificate of lawful use for development to Mr Y it did not consider this. This was a fault by the Council. Had it considered this, it could not have granted a certificate of lawful use for development. Mr Y would have had to apply for planning permission and Mr X would have had the opportunity to make representations on the application.
39. In making its response to our enquiries, the Council said the Article 4 direction had been missed until the point of replying to our enquiries. In his original objection, Mr X referred to the Article 4 direction. Mr X also referred to the Article 4 direction being in place, in his communications with the Council.
40. The Council did not consider the Article 4 direction in place when it decided Mr Y could make changes to his property under permitted development rights. It decided this fell under class E permitted development rights. This gave Mr Y certain legal rights.
41. Because the Council awarded the certificate of lawful use for development to Mr Y, it believed it had no duty to consider Mr X's amenities in its assessment of Mr Y's application. A proper assessment of the impact of the building work on Mr Y's neighbours did not take place.

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42. The Council said it considered and responded to Mr X's comments through its complaint's procedure. Because Mr X complained, a Planning Enforcement Officer visited the building site. This visit informed the Council's complaint response. The Council considered some of Mr X's concerns, but not the comments about the Article 4 direction.
  43. A further issue for Mr X was how the outbuilding in Mr Y's garden was being used. Mr X complained Mr Y was using it as self-contained residential accommodation. He said the building was ancillary to the dwelling house.
  44. The Council's consideration of this was confusing. The Council determined that Mr Y's outbuilding was 'used as guest accommodation ancillary to the main house'. The Council went on 'its use is only as an annex and not as a separate dwelling'.
  45. This showed the Council did not apply the proper test. The permitted development rights apply to any building or enclosure required for a purpose incidental to the enjoyment of the dwelling house.
  46. Government guidance is clear. A purpose incidental to the enjoyment of the house would not cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.
  47. While the Council has explained why it considers the outbuilding ancillary to the main dwelling, it has not explained why it considers it incidental to the main dwelling.
  48. Notwithstanding the fact the Article 4 direction means the outbuilding should not have been built under permitted development rights, it is also, in any event, unlikely to have met the incidental criteria for permitted development. After it made the comments as described in paragraph 44, in response to a draft decision about this complaint, the Council later said it considered the outbuilding to be incidental.
  49. The Council said while it made the wrong decision about granting the certificate of lawful use for development, the certificate has now been issued and this cannot be changed. It said Mr X's amenities have not been affected by Mr Y's outbuilding.
  50. It is possible that but for the Council's errors, Mr Y would have submitted, and the Council would have approved a planning application for the outbuilding.
  51. Mr X complained about the noise in the outbuilding, however the nature of living in a terrace house, means that neighbours often hear noise from one another's garden/outdoor areas. Hearing general day to day sounds of a neighbour is not a loss of amenity. Excessive noise has not been complained about.
  52. The Council decided Mr X did not suffer an injustice, due to its mistakes. The Council said the issues about fire safety and building control are being considered through the 'building control regime'. The Council have not made a final inspection of the outbuilding, but in response to our enquiries, it said it will arrange this.
  53. However, the Council's failure to properly consider this matter and to follow proper process meant that Mr X lost the opportunity to make representations on the development. The approach taken by the Council was inaccurate, confusing and ill informed. Key parts of Mr X's complaint were dismissed. This caused distress, frustration and disappointment which was exacerbated by the Council's failure to recognise or address its errors at any stage in the complaint process.

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54. While frustrating for Mr X, the Council have now assessed the impact of its mistakes. The recommendations made to the Council should stop these mistakes from happening again. However, the recommendations will not focus upon taking physical corrective action to the outbuilding itself. The injustice suffered by Mr X was distress, time and trouble. The recommendations made aim to remedy this injustice.

## **Actions**

55. To remedy the injustice suffered by Mr X, within four weeks of receiving a final decision, the Council should:
- apologise to Mr X in line with our guidance on Making an Effective Apology. We publish [guidance on remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy injustice. The organisation should consider this guidance in making the apology I have recommended in my findings;
  - make a symbolic payment to Mr X of £250 to recognise the undue time trouble, and distress experienced, due to fault of the Council; and
  - schedule the final inspection of Mr Y's outbuilding, if it has not already done so.
56. Within 12 weeks of receiving a final decision, the Council should;
- share learning from this decision with the relevant staff, in both planning and complaint handling teams;
  - with reference to the relevant legislation, deliver training to its staff about:
    - a) Article 4 directions,
    - b) class E outbuildings,
    - c) the difference between ancillary and incidental use, and
    - d) how learning about point a-c informs Council decision making.

## **Final decision**

57. I have completed my investigation. I have found the Council to be at fault. The recommendations made are a suitable remedy for the injustice suffered by Mr X.

## **Investigator's decision on behalf of the Ombudsman**