

The Ombudsman's final decision

Summary: We found no fault in how the Council reached its decisions not to take enforcement action against development near Mr X's home.

The complaint

1. Mr X complained about the Council's handling of development near his home because it:
 - did not properly consider the noise impact of the development on his home before granting planning permission;
 - allowed works that severed the roots of trees and denied them water and nutrients; and
 - failed to take enforcement action against breaches of planning control, including non-compliance with conditions about drainage of the development site.
2. Mr X said the Council's actions caused him much stress and anxiety and led to:
 - an unacceptable increase in noise at his home;
 - trees on the site dying and becoming unstable and a threat to his home; and
 - surface water running off the site and presenting a danger to road traffic.
3. Mr X wanted the Council to:
 - reduce noise levels;
 - accept responsibility for, and the costs of, any future damage to his property caused by dead, dying and falling trees; and
 - enforce against the planning breaches, including preventing surface water leaving the site.

What I have investigated

4. I have investigated that part of Mr X's complaint about the Council's failure to take enforcement action against breaches of planning control, including non-compliance with drainage conditions. My reasons for not investigating the remainder of Mr X's complaint are set out at paragraphs 31 to 33 of this statement.

The Ombudsman's role and powers

5. 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 the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)
6. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
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*)

How I considered this complaint

8. I have:
 - considered Mr X's written complaint and supporting papers;
 - asked for and considered the Council's comments and supporting papers about the complaint; and
 - shared a draft of this statement with Mr X and the Council and considered any comments received before making a final decision.

What I found

Background

9. Most development needs express planning permission from the local council. But Parliament has given a blanket planning permission ('permitted development') for many minor works. Subject to the specific nature of the works, local councils, acting as planning authorities, have no control over these matters.
10. Where councils expressly grant planning permission, they usually include conditions that regulate the approved development and its use. Conditions should be necessary, enforceable and reasonable in all other regards. Councils may use a condition to remove permitted development rights when they grant planning permission. Such a condition means a developer must get an express planning permission from their council to carry out what would otherwise have been permitted development.
11. A failure to comply with a planning permission, including its conditions, will be a breach of planning control. Councils should investigate reported breaches, but they do not need to act against every breach they find. Rather, they have discretion to act. The Government's National Planning Policy Framework (NPPF) says councils "should act proportionately in responding to suspected breaches of planning control".
12. When deciding whether to take formal enforcement action, councils will consider what degree of planning harm a breach will likely cause the public. Councils will also usually have choices in how they respond to a breach. For example, a council can ask, but not force, a developer to submit a retrospective planning application. This may happen where a council considers it could grant planning permission, probably with conditions, to regularise unauthorised development.

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13. The Council has a 2020 planning enforcement policy ('the Policy') which sets out its approach to planning enforcement. The Policy reflects the NPPF and says the Council will consider each case on its merits and take account of the level of harm caused by any breach. The Policy explains how the Council prioritises cases by separating them into those needing either a 'high' or 'standard' response. The Policy says the Council aims to decide whether there is a breach within 12 weeks for 80% of reported cases. But the time need to satisfactorily resolve a breach varies from case to case. The Policy says the Council will usually try to resolve a breach informally with the person responsible before considering formal enforcement action. And a Council enforcement officer will keep those reporting a breach informed about the investigation and tell them within 10 working days of making a decision. The Policy also sets out how people may raise concerns about the Council's enforcement service, including making a complaint.

What happened

14. In 2015, the Council granted planning permission for development on land ('the Site') near Mr X's home. In 2017 and 2019 the Council approved the developer's applications to change the original planning permission. The 2015 planning permission, as varied, included a condition removing some permitted development rights, including those for hard surfacing ('the Condition'). The Condition was imposed to reduce surface water run off on to a nearby public road.
15. In September 2020, Mr X reported a breach of planning control on the Site to the Council. The Council opened an enforcement investigation into the breach, which concerned hard surfacing works and two dead trees. The Council gave the case 'standard priority'. The Council's enforcement investigation included contacting the developer about the alleged breach and visiting the site both during and soon after heavy rain.
16. The Council found the hard surfacing on the Site breached the Condition. The Council also found that another planning condition required the developer to replace the two dead trees ('the Tree Condition'). The Tree Condition had been placed on the 2015 planning permission, as varied, to safeguard the visual amenity of the area. The Council asked the developer to either remove the hard surfacing or apply, retrospectively, for planning permission to keep it. The Council chased the developer for a response but received no planning application and the hard surfacing remained on the Site. The developer also did not replace the dead trees.
17. The Council monitored the Site and then assessed the impact of the hard surfacing breach and resulting planning harm. The Council was satisfied the developer had provided satisfactory drainage and found no evidence of surface water run off outside the Site boundary. The Council also consulted with environmental health officers about Mr X's concern the hard surfacing caused unacceptable noise. The Council found the hard surfacing did not result in a substantial increase in noise levels. The Council also considered the hard surfacing had had limited impact on nearby trees, which trees showed no signs of sickness. The Council therefore concluded the hard surfacing did not cause planning harm and formal enforcement action was not needed.
18. The Council also took advice from its tree specialist about the two dead trees. The tree specialist said one of the trees had not provided substantive screening for the Site and its replacement was not justified. The second tree, with others, had provided significant screening and had an amenity role in the local

environment. However, the specialist officer did not consider it possible, due to the built development on the Site, to replace it in the same position. The Council found the Tree Condition did not require replacement trees to be planted “at the same place”. The Council therefore asked the developer to plant a replacement tree within the Site.

19. Further correspondence between Mr X and the Council led it to open a second ‘standard response’ enforcement investigation. The second investigation concerned whether built development on the Site complied with the approved planning permission plans. The Council’s enforcement investigation included a site visit during which officers measured the building Mr X reported as breaching planning control. The Council found there were differences between the measured built development and that shown on the approved plans. The Council did not consider the differences resulted in planning harm sufficient to merit enforcement action. However, it asked the developer to apply for retrospective planning permission for the development as built.
20. The Council wrote to Mr X in May 2021 to tell him of its enforcement findings. And, when the developer did not make a retrospective planning application for the built development, the Council further considered the breach. The Council found the built development did not cause material planning harm and formal enforcement action was not necessary. The Council then closed its second enforcement investigation. The Council wrote to Mr X in January 2022 to tell him of its decision on the second enforcement case.
21. Meanwhile, Mr X had continued to correspond with the Council about the development and enforcement matters. The points raised by Mr X included the risk to his home presented by the two dead trees on the Site (see paragraphs 15 and 18). The Council’s specialist tree officer inspected the trees in November 2021 and found they presented no immediate risk. The Council confirmed to Mr X the developer was responsible for trees on the Site, as Mr X was responsible for trees on his property. Ultimately, remaining dissatisfied with the Council’s enforcement decisions, Mr X complained to the Ombudsman.
22. In responding to the Ombudsman, the Council said it was not aware the developer had replanted any trees on the Site (see paragraph 18). The Council also said further consideration had led it to believe the Tree Condition was not enforceable. The Council said the number and position of trees remaining on the Site provided adequate screening. And there was insufficient room within the Site for any newly planted trees to successfully establish and grow to maturity.
23. The Council pointed to the considerable contact it had had with Mr X over many years about the development. It said it had acted appropriately giving due care and genuine consideration to all Mr X’s concerns. And its enforcement investigations had not found evidence to substantiate enforcement action and its officers had given Mr X reasons for its decisions.

Consideration

Introduction

24. We are not a planning appeal body. Our role is to consider how councils reach their planning decisions and whether there is evidence of fault in the process. Where we find evidence of fault, we consider if this is likely to have affected a council’s planning decision and caused the complainant significant injustice.
25. As a publicly funded body we must be careful how we use our limited resources. We conduct proportionate investigations; completing them when we consider we

have enough evidence to make a sound decision on whether a council has acted with fault. This means we do not try to answer every question or address each detailed point raised by a complainant about what a council did. So, we cannot always respond to complaints in the detail people might want. Here, Mr X's detailed correspondence with the Council raised many issues and queries. While I carefully considered all that Mr X said, this statement does not, and did not need to, address every point raised in his correspondence with the Council. My focus was whether the Council's two enforcement investigations fell below acceptable administrative standards so as to evidence fault in its decision making.

The Council's enforcement decision making

26. The evidence showed the Council acted correctly in responding to Mr X's concerns about possible breaches of planning control on the Site by opening enforcement investigations. It then sought information to determine whether breaches had taken place by contacting the developer and visiting the Site. These were steps we would expect a council to take to decide whether there was any breach. These steps were also in line with the Policy.
27. The Council's initial investigations led it find there had been breaches of planning control on the Site. It then asked the developer to cooperate by planting a replacement tree and making retrospective planning applications. Seeking to address breaches informally, including asking for retrospective planning applications, was in line with the Policy.
28. When the developer did not cooperate with the Council's enforcement requests, the Council needed to further consider what, if any, action it next needed to take. The Council's further investigations included taking advice from both specialist tree and environmental health officers. This was a reasonable and suitable step to take to assist the Council's enforcement officers in assessing the planning harm arising from the breaches. Having visited the Site and sought advice, the Council was able to reach properly informed enforcement decisions. I recognised Mr X likely strongly disagreed with the Council about insufficient planning harm arising from the breaches. However, as I saw no evidence to show there was fault in the way the Council's decisions were made, I had no grounds to question those decisions (see paragraphs 5 and 24).
29. In reaching my view, I considered the time it took the Council to reach its decisions and to tell Mr X about those decisions. Considerable time passed before the Council formally told Mr X it would not further pursue the breaches once the developer did not apply for retrospective planning permission or plant a replacement tree. However, the evidence showed Mr X and the Council continued regularly to correspond about the development. I therefore did not find the time taken by the Council to confirm it would not take formal enforcement action caused Mr X any significant injustice.

Final decision

30. I completed my investigation finding no fault in how the Council made its enforcement decisions.

Parts of the complaint that I did not investigate

31. Mr X's complaint included concerns about the Council's decision in 2015 to grant planning permission for development on the Site. We had already investigated a

complaint from Mr X about both that planning decision and a 2017 decision to change the approved development. However, Mr X said he had found new issues affecting the Council's 2015 planning decision. He also said the Council had provided 'distorted information' in our earlier investigation.

32. The Council's planning decision was taken over six years ago. I could not investigate matters we had already investigated. And a complaint about new issues concerning the 2015 planning permission, and its 2017 amendment, was a late complaint (see paragraph 6). I found no good reasons to investigate now those parts of the complaint that concerned matters linked to the 2015 grant of planning permission and its 2017 amendment.
33. Mr X also complained about the Council's April 2019 planning decision to approve a further change to the development. Again, a complaint about the Council's 2019 planning decision was a late complaint (see paragraph 6). I found no good reasons to investigate the Council's 2019 decision.

Investigator's decision on behalf of the Ombudsman