Local Government
OMBUDSMAN

Digest of Cases 2007/08

Section G

Planning

LGO 03 (03/08)

Introduction

During 2007/08 the Ombudsmen received 3,930 complaints about planning matters. While this was a slight reduction on the previous year's figure of 4,333, it still means that about a quarter of all complaints that the Ombudsmen receive are about planning.

Common complaints in this category include that councils have failed to:

- notify residents of planning applications;
- properly consider the impact of neighbours' planning applications on complainants' amenity; or
- take action against alleged breaches of planning control.

In considering planning complaints, one of the key issues that the Ombudsmen have to assess is the extent of injustice claimed. This is because even if there has been some fault by a local authority this may not necessarily have caused injustice to the complainant.

G1: Planning enforcement

Garage built without permission in conservation area – decision not to take action contrary to officers' recommendation – breach of council policy – area committee took irrelevant matters and incorrect facts into account

The complaint

Mr V and Mr W lived in a conservation area. They complained about the way that the council decided not to take enforcement action against a neighbour who had built a rear garage and added features to his house without planning permission. The development had a detrimental effect on Mr V's and Mr W's enjoyment of their own homes, and they consider that it reduced the value of their properties.

What happened

The council investigated Mr V's complaint and agreed that the development breached the council's policies and guidance for building in conservation areas and was detrimental to the local street scene. They made a recommendation to an area planning committee that enforcement action should be taken to make the neighbour remove the garage and other unauthorised features. However the area committee decided not to take action.

Mr V and Mr W were disappointed with the council's failure to consider the matter properly, and had to make great and prolonged efforts to have the decision reconsidered.

The Ombudsman's view

The Ombudsman found that, in taking its decision not to take enforcement action, the area committee took into account irrelevant matters and factually inaccurate information. The committee gave little weight to the council's policies and planning guidance. Some members of the committee had received no training in planning issues. One of the reasons given for their decision was factually inaccurate.

A review of the council's records revealed that in recent years this area committee had refused a higher proportion of officers' recommendations to take planning enforcement action than the council's other area planning committees, and that concerns about this committee's planning decision making had been raised in a report to the council's executive committee by its scrutiny Committee in 2003. The Ombudsman said:

"It appears that there is still a need for training about planning matters for the members of this committee."

The outcome

The Ombudsman found maladministration causing injustice and recommended the council to:

- put this case to the council's sustainable development committee for it to consider afresh whether it would be expedient to take enforcement action;
- pay Mr V and Mr W £500 each; and
- review the report and recommendations adopted by its executive in 2003, to see what could be done to build on this report and ensure the implementation of its decisions.

(Report 05A14008)

G2: Planning enforcement

Business activities without planning permission – issue of lawful development certificate against legal advice – members' panel not even-handed

The complaint

Ms X complained on behalf of a small group of residents of a rural hamlet about the way the council dealt with activities at a nearby business that did not have planning permission. She said that the council had failed to take enforcement action against the business and issued a lawful development certificate (LDC) contrary to its own legal advice. She said that, as a result, the residents suffered unacceptable noise and disruption, and that important wildlife habitats were destroyed.

What happened

The site owner had submitted an application for a LDC in November 2003, but it was not determined until 2006. Despite strong legal advice to the contrary, the council decided to appoint a members' subgroup to evaluate the evidence.

The residents, through their professional adviser, sought to submit evidence to challenge that provided by the site owner. The members' panel eventually recommended approval of the application, contrary to the legal advice it received.

The Ombudsman's view

The Ombudsman's investigation found that the members' panel had met erratically, was not rigorous in evaluating the historic evidence, and was swayed by their views about the current planning merits of the site. He concluded that the council had not been even-handed in dealing with the information provided and that the delayed and unsound decision-making process had caused injustice to the residents. He said:

"…the process by which the LDC was considered was fundamentally flawed. Had the matter been dealt with correctly, I believe the application should have been refused on the evidence."

A LDC had been issued when the application should have been refused and the matter considered as a planning application on its merits. The long delay in reaching a decision also meant that investigation of other unapproved activities was slow and half-hearted while the planning status of the land was undetermined. The residents suffered considerable cost and uncertainty over a four-year period, and some permanent loss of amenity that could not now be defined.

The outcome

The Ombudsman found maladministration causing injustice to the residents represented by Ms X. He recommended the council to:

- pay £10,000 to the worst-affected resident who lived closest to the site;
- pay £2,500 to a couple who were similarly affected but who had now moved away;
- pay £7,500 to another couple who were particularly affected by lorries visiting the site;
- pay £4,000 as a contribution to Ms X's professional costs; and
- commission external consultants to carry out and complete a reassessment of the present position at the site within six months of the date of the Ombudsman's report, taking into account all nuisance and enforcement issues, using the LDC limitations as a benchmark. The council should report its findings both to the Ombudsman and to affected residents, and should then consider any recommendations to protect the amenity of the area further.

(Report 06B11183)

G3: Planning enforcement

Conversion of public house for residential use – conservation area – differences between built and approved schemes – delay

The complaint

Three residents complained about the council's handling of a planning application to convert a large public house and beer garden near their homes to residential accommodation and build new properties to the rear. The development was in a conservation area.

What happened

When development work started, the residents informed the council that it did not appear to comply with the planning consent. It was some time before the council accepted that there were significant differences between the built and the approved schemes.

The council sought a planning application from the developer so that it could give proper consideration to the development as built. It did not, however, pursue this with sufficient vigour and the development was allowed to progress during the period of delay from August 2005 until December 2005, when an application for the development of the land was received. In April 2006 a separate application for the conversion of the public house itself was received. By this time

some of the flats were occupied and their use was causing disturbance, particularly from the use of a metal staircase that had been installed on the wall adjoining one of the complainants' homes without planning consent. The council's environmental health department was informed of the disturbance and in June 2006 an abatement notice was issued. The environmental health department also recommended refusal of the planning application for the conversion of the public house because the staircase was unacceptable.

The application for the conversion of the public house was refused in February 2007, after the parallel application had been refused at appeal.

The Ombudsman's view

The Ombudsman said:

"It seems to me that the council did not have a clear strategy in this case and failed to act robustly for several months when no accurate revised plans were forthcoming."

He was also critical of the council for the way it dealt with and responded to the complainants, for example, providing inaccurate responses and claiming not to have received letters that were hand-delivered to the council's offices.

Outcome

At the time that the report was published the unauthorised development was still in place. To resolve the complaint the Ombudsman recommended that the council should:

- review the way the enforcement team dealt with breaches of planning control within a conservation area;
- apologise to the complainants for the prolonged uncertainty about what would eventually be approved on the land adjacent to their home;
- review the complaint-handling systems within the planning department;
- pursue enforcement action at the site as soon as possible;
- pay £1,000 to one complainant for the six months when she was affected by the statutory nuisance caused by the metal staircase;
- pay £500 to the second complainant to reflect the additional time he had been living with the statutory nuisance caused by the metal staircase; and
- pay a further £500 to the second complainant and £250 to each of the other complainants to recognise their time and trouble in pursuing their justified complaints with the council and with the Ombudsman.

(Report 05B09611, 06B00981 and 06B00983)

G4: Planning applications

Two similar planning applications for extensions to neighbouring properties – failure to take account of impact on neighbour – failure to be even-handed

The complaint

Ms Y complained about the way the council dealt with two similar planning applications for extensions to neighbouring semidetached properties. She complained that the council failed to take adequate account of the adverse impact on her Victorian property and failed to adopt an even-handed approach.

Ms Y said that the nearer extension severely affected her amenity as it doubled the length of the house and was very close to the boundary. She looked out onto a brick wall and felt very enclosed. She also said that her first floor bedroom window was overlooked by the new ground floor dining room window and she needed to erect a fence to screen the extension.

The Ombudsman's view

The Ombudsman found fault in that the council:

- did not take adequate steps to consider the unique joint nature of the applications and the effect this had on the committee process;
- did not allow Ms Y to speak to the committee before the decision on the first application had been made; and
- did not give clear reasons why the committee departed from the planning officer's recommendation to refuse both applications.

The Ombudsman said that these failures caused Ms Y injustice as she was left with a perception of unfairness in the decision-making process and the feeling that, once the decision had been made on the first application, the decision on the second one was a foregone conclusion. This was exacerbated by the failure to provide proper reasons for the decisions.

The outcome

The Ombudsman could not say that permission for the extensions would not have been granted even without the failures he had identified. He recommended that the council pay Ms Y £1,000.

(Report 06B07907)

G5: Planning applications

Large indoor football stadium – failure to take account of local plan policy – impact on view of cathedral

The complaint

Mr Z complained that the council gave planning permission for a large indoor football stadium to be built where it was highly visible from rail and road routes into a historic city. At one point, the stadium impinged on the view of the cathedral from a main approach road to the city. It was also clearly visible from the main railway line.

Background

The council had specific policies in its local plan designed to protect and enhance the environment. One particular policy – E11 – was concerned with areas visible from transport corridors and said that the council would protect and enhance areas visible from the road network, railway lines and recreation routes by not permitting development that unacceptably adversely detracted from them.

The Ombudsman's view

The Ombudsman accepted that the council had the right to apply its policies as it saw fit in the circumstances. In this case, however, the council did not bring policy E11 to the attention of the development committee who could not, therefore, take it into account when deciding to grant planning permission for the stadium.

The Ombudsman said that the stadium was built "…in a landscape that was supposed to be specifically protected…". Mr Z, who lived on the opposite side of the valley looking towards the cathedral, could reasonably have expected this view to be protected, preserved and enhanced.

The outcome

The Ombudsman found maladministration and the council agreed to her recommended remedy, which was to commission an independent landscape consultant to examine the site and produce a report and recommendations outlining what, if anything, could be done to reduce the visual impact of the building. The council would then consider these recommendations and decide whether any of the actions identified should be taken.

(Report 04C17368)

G6: Planning applications

Development on site of former gasworks – decontamination works to site before construction

The complaint

Four residents complained about the way the council dealt with a planning application that led to the development of their homes on land that was formerly the site of a gasworks. They said that the council had failed to ensure that the land their homes were built on was properly decontaminated prior to construction.

The Ombudsman's investigation

The investigation of this case was unusual in that it involved delving into records going back many years because of the significant injustice claimed by the complainants. Many different pieces of Government advice and guidance, and legislation, were relevant and had to be taken into account.

The Ombudsman's view

The Ombudsman found that the council had not properly considered whether a condition needed to be imposed on the planning permission to ensure that remedial work was done prior to the properties being built. It also failed to take into account Government advice and guidance on dealing with planning applications for developments on contaminated land.

The Ombudsman recognised there was uncertainty as to what would have happened had an appropriate condition been applied at the time. It was possible that decontamination work might have gone further than the minimum standards required at the time. He added "I cannot know for certain that all the complainants' subsequent difficulties would have been avoided, but they might have been".

The outcome

The Ombudsman found maladministration causing "significant injustice", and the council agreed to pay £5,000 to each of the four complainants, in addition to fulfilling its existing commitment to conduct remedial works to the properties' gardens at no cost to the owners.

(Report 05B01966 and others)

G7: Planning applications

Application for change of use to waste recycling centre – no notification of neighbours – noise nuisance

The complaint

Two people (one lived in a sheltered housing complex) complained that the council had granted permission for the change of use of a nearby industrial unit to a waste recycling centre without notifying affected residents or consulting the environmental health department.

What happened

The council received the application for the change of use of the building in December 2004. The senior planning officer noted on the file a query about consulting environmental health on whether the change would lead to problems. However, the consultation did not take place. The council did post a notice on the site and in the local press to publicise the application but did not notify nearby residents. The officer dealing with the case decided that they lived too far away. The nearest homes were around 95 metres away.

The change of use was granted, subject to conditions, including one limiting the waste recycling activity to within the building. The facility started operating in July 2005 and the council received its first complaint in August. The environmental health department investigated and established that the operation was causing a nuisance.

The council organised a meeting of the departments involved and the Environment Agency (who issued the waste management licence). Between October 2005 and May 2006 the council investigated the problem and possible solutions, commissioning consultants and seeking advice from legal counsel.

The noise from the recycling centre was recorded at plus 17 decibels. This measurement scale is a logarithmic scale so that every two decibels increase is a doubling of the noise. The noise was from skips being dropped and dragged, and from waste sorting that involved noisy machinery.

The council had meetings with the operator of the facility and commissioned a further consultant's report in November 2006. This concluded that the operator had changed its practice and was complying with the conditions of the planning consent. Monitoring by the council concluded that there was no longer a statutory noise nuisance, although it was accepted that the operation did produce some noise.

The Ombudsman's view

The Ombudsman was critical of the council for the failures during the processing of the planning application. He did not conclude that the change of use would have been refused if there had been consultation, but he did consider that an opportunity was lost to ensure better control of the site from the start. He said that this resulted in the complainants suffering avoidable nuisance between August 2005 and November 2006.

Outcome

The Ombudsman recommended the council to:

- pay the complainants £2,000 each;
- review its procedures to ensure that the maladministration identified did not recur; and
- continue to monitor the site and, once the outcome of the latest monitoring was known, take action if there was evidence of a statutory noise nuisance in order to protect the amenities of local residents.

(Report 06B01379 and 07B02281)

G8: Planning applications

Failure to condition ground levels on new developments on sloping ground

The complaint

Mr A complained about the council's decision to grant planning permission for a housing development next to his home. Because the council did not impose any conditions about land levels, the development was being constructed at a higher level than it had envisaged. As a result there was the possibility of a greater degree of overlooking of Mr A's property that might otherwise have been thought unacceptable.

Outcome

As a result of the Ombudsman's investigation the council negotiated with the developer to minimise the impact of the development on Mr A's amenity. The developer agreed to reduce the height of garages closest to his boundary and to reduce the levels of the gardens of the plots immediately behind his home. It also approved the developer putting in a higher boundary fence, so as to cut down on the possibility of the occupiers of the new plots being able to see directly into Mr A's garden and home from their gardens.

As Mr A had concerns about drainage from the new development, the council also asked the developer to install new drainage between the development site and Mr A's property. The council also commissioned an independent drainage expert to confirm if those arrangements were satisfactory.

In addition, the council apologised to Mr A and paid him £250 for the distress and inconvenience that he had suffered.

(Case reference confidential)

G9: Planning advice

Works involving party wall – council gave incorrect advice to neighbour that planning consent not needed – costs of legal action incurred unnecessarily

The complaint

Ms B complained that the council advised her neighbour in 2001 that works he was carrying out did not require planning consent. In 2003, when Ms B took her own legal proceedings under the Party Wall Act 1996, the council decided that its earlier advice had been incorrect and that planning permission was indeed needed for the development. The neighbour's subsequent planning application was refused by the council.

What happened

The works the neighbour carried out in 2001 included the construction of a wall and a flight of steps, and the undercutting and excavation of the foundations of the driveway and garage of Ms B's property, including a party wall. When the work was reported to the council, it did not record accurately details of the site and the works carried out. This failure to ascertain adequate facts in 2001 meant that it incorrectly advised the neighbour that the work did not require planning permission at that time.

The Ombudsman's view

The Ombudsman found that the council had delayed in concluding that a breach of planning control had occurred, and its enforcement action was also delayed by two years. At least some of Ms B's legal costs could have been avoided if the council had dealt promptly and appropriately with the development affecting her home.

The outcome

To remedy the injustice that Ms B suffered as a result of the council's failure, the Ombudsman recommended that the council should:

- pay Ms B £2,000 for the avoidable distress and anxiety she suffered from believing that the council could not assist her; and
- pay her a further £4,268 which represented a 50 per cent contribution to her legal and professional costs.

(Report 04B16079)

G10: Planning advice

Permitted development rights – need to give accurate advice

The complaint

Two large storage tanks were constructed on land close to Mr C's home. He complained that the council had wrongly failed to require the neighbour to submit a planning application for the tanks.

What happened

Initially the council had taken the view that the erection of the tanks was permitted development and therefore did not require express planning consent by the council. The council reconsidered this view during the Ombudsman's investigation and decided that the neighbour should have submitted a planning application. By this time Mr C had sold his house and moved, but only after having to reduce the selling price by £2,500.

Outcome

To remedy the injustice, the council agreed to the Ombudsman's recommendation to pay Mr C £2,500.

(Case reference confidential)