

The Ombudsman's final decision

Summary: Mr X complains the Council mistakenly issued a Decision Notice without removing the Permitted Development rights. The Council acknowledged this and has apologised. We find fault with the Council for the omission, but the injustice is not sufficient to warrant a remedy.

The complaint

1. Mr X complains the Council mistakenly issued a Decision Notice without removing the Permitted Development rights.
2. The Council acknowledged this and have apologised.
3. Mr X would like the Council to launch a Judicial Review to quash the Decision notice and re-issue it with the removal of Permitted Development rights.

The Ombudsman's role and powers

4. 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*)
5. If we are satisfied with a council'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

6. I considered:
 - Mr X's complaint and the information he provided;
 - documents supplied by the Council;
 - relevant legislation and guidelines; and
 - the Council's policies and procedures.
7. Mr X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

Legislation

8. Parliament has given a blanket planning permission ('permitted development') for many minor works. Subject to the specific nature of the works, local planning authorities have no control over these matters.
9. Article 2(3) Land is land in an area of outstanding natural beauty (The Town and Country Planning (General Permitted Development) Order 2015 Schedule 1 Part 1 Article 2(3) land (b)).
10. Schedule 2 Permitted Development Rights A.2 Schedule 2 says Permitted development is not permitted on Article 2(3) land if
 - “(a) it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;*
 - (b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or*
 - (c) the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse;*
 - (d) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (b) and (c).”*
11. Class E of the General Permitted Development Order says in Paragraph E3: “In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.”

What Happened

12. The Planning Committee voted to remove Permitted Development Rights when discussing a local Planning Application.
13. Following the Committee's decision, officers in the Planning Department issued a Decision Notice but failed to include this condition due to an administrative error.
14. The Planning Department tried to resolve the matter by issuing an amended Decision notice as soon as they saw the mistake.
15. However, following legal advice the “revised” Notice was removed as this was not legally allowed.
16. Mr X complained to the Council asking for the original Decision Notice to be withdrawn and a new Notice issued, removing Permitted Development rights, as voted for and agreed in the Planning Committee meeting.
17. In the complaint response the Council admitted fault and apologised to Mr X for the error.
18. Mr X asked the Council to carry out Judicial Review and issue a correct Decision Notice.

Analysis

19. Once a council has issued a Decision Notice it has no lawful ability to withdraw or nullify it, even if it is incorrect.
20. Only a Judicial Review in the High Court can quash a Decision Notice, and this has to be carried out within 6 weeks of issuing a decision.
21. The Council said the consequences of this error are limited, as the Planning Application is in an Area of Outstanding Natural Beauty, which means there are further limits over what development can take place. So it did not intend to apply for a Judicial Review.
22. The proposed building is subject to the limitations set out in paragraph E3 of the GPDO (paragraph 11 above). Because of this the Council said "... the extent of what is possible is highly limited and as such has limited consequences".
23. The Council wrote to the Applicant to make clear that it was the plan to include the removal of the Permitted Development Rights in the Decision Notice. Even though it was omitted in error, no further building work can be done without formally applying for further Planning Permission as the area concerned is an Area of Outstanding Natural Beauty.
24. Although I understand Mr X's frustration and sympathise with his position, the Council apologised for the error, and continued to engage with Mr X, trying to arrange a meeting after the three stage complaint procedure had been completed.
25. Mr X did not take the Council up on the offer to meet as neither would concede their point.
26. The injustice to Mr X following the Council's fault is his expectation the Permitted Development Rights would be removed in the Decision Notice, but was not. This injustice is not sufficient to warrant recommending a remedy.
27. In the responses I have from the Council it is clear that as soon as the error was discovered, the Planning Department took all the steps possible to correct it. The Council have been thorough and polite in the complaint correspondence and have continued to engage with Mr X regularly, even after the complaint process was exhausted.
28. Further the Council have taken steps to try to prevent this fault happening in future.
29. If Mr X's neighbour does start further development without valid planning permission Mr X can make a planning enforcement complaint to the Council. If, when that has run its course, he is still not satisfied, he can bring a new complaint to us.

Final decision

30. I find fault with the Council for not issuing the correct Decision Notice. However the injustice is not sufficient to warrant any further remedy.

Investigator's final decision on behalf of the Ombudsman