

The Ombudsman's final decision

Summary: Mr X complained the Council failed to take proper enforcement action against a neighbour who extended their property into public land and failed to follow through on actions it told him it would. We find the Council at fault for delays in dealing with Mr X's complaint. We recommend the Council apologise to Mr X and make a payment to recognise the uncertainty caused.

The complaint

1. Mr X complains the Council failed to take proper enforcement action against a neighbour who extended their property into a section of public space. Mr X also complains the Council failed to carry out actions it told him it would.

The Ombudsman's role and powers

2. 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*)
3. We cannot question whether an organisation's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), 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 about his complaint and considered information he provided. I also considered information received from the Council.
6. 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

Planning enforcement

7. Breaches of planning control are defined in S171A of the Town and Country Planning Act 1990 as:
 - The carrying out of development without the required planning permission; or
 - Failing to comply with any condition or limitation subject to which planning permission has been granted.
8. Planning enforcement action is discretionary. Councils may decide to take informal action or not to act at all. Informal action might include negotiating improvements, seeking an assurance or undertaking, or requesting submission of a planning application so they can formally consider the issues.

National Planning Policy Framework

9. The National Planning Policy Framework (NPPF) sets out the government's planning policies for England and how these are expected to be applied.
10. The Framework says effective enforcement is important to maintain 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.

Council's Planning Enforcement

11. The Council initially attempts to resolve breaches through negotiation and considers whether it needs to take formal action if this fails.
12. If the Council identifies a breach of planning control, it will usually give the landowner an opportunity to put things right. If the Council identifies a development may be considered acceptable in planning terms, it may give the landowner an opportunity to submit a planning application.
13. If negotiations fail, the Council considers its power to serve an enforcement notice. This is a formal instruction to put things back how they were before work started. It is a criminal offence not to comply with an enforcement notice and this could lead to prosecution.

What happened

14. In November 2021, Mr X notified the Council of a potential breach of planning regulations. Mr X said a neighbour had extended his property into sections of open public space adjoining their land.
15. The Council acknowledged Mr X's report and appointed an enforcement officer.
16. Following site visits and conversation with Mr X, in January 2022, the Council identified several issues on the land that it considered to be an unauthorised change in use.
17. Mr X chased the Council for an update in February 2022 and was told large workloads meant the investigation was taking time to progress. The Council confirmed it had visited the site again and decided there was an unauthorised change of use that would have required planning permission. Specifically, the Council said it had identified the placement of a compost bin and bird feeder, and the creation of flower beds which gave the appearance of a residential garden rather than public open space.

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18. The Council said it considered a planning application for this would not have been supported, so it would ask the neighbour to remove the residential paraphernalia from the land. However, the Council explained not all the changes to the land would have required planning permission. The Council said the installation of a gate in the neighbour's wall would not require planning permission. Nor would the erection of iron railings or the planting of hedges.
 19. In March 2022, Mr X chased the Council again. The Council confirmed it would contact Mr X's neighbour and ask them to return the land to its original state. However, it repeated it did not consider the access gate, iron railings, or hedge planting would have required permission.
 20. The Council wrote to Mr X's neighbour in April 2022. It explained it had received a complaint about an extension of their property into open public space. The Council said it had visited the site and noted a variety of residential paraphernalia, including a compost bin, bird feeder, stepping stone slabs, as well as the creation of flowerbeds with stones against the boundary wall and around trees. The Council said this would be considered an unauthorised change of use from public land to residential and asked for it to be removed within 21 days. The Council explained failure to comply would result in formal enforcement action.
 21. The Council also updated Mr X to let him know it had contacted his neighbours. It explained that if the land was not made good, it would consider formal enforcement action.
 22. The Council revisited the land in May 2022. It noted the area no longer looked as though it were being cared for as a residential garden. It noted stones remained around the bases of trees, suggesting flower beds, but the residential paraphernalia had been removed.
 23. In July 2022 the Council visited the property again and noted it remained in the same state as the visit in May 2022. It noted the iron railings and planted hedges remained, but it had already decided these were not a breach of planning control.
 24. Mr X chased the Council for an update later that month. The Council apologised for the delays and attributed this to a large workload and a depleted enforcement team. The Council explained it did not deem the iron railings or planted hedges to be a breach of planning control so it would not ask for these to be removed. It said it had carried out a number of site visits and the land was largely back to its previous condition. The Council said it did not consider it would be expedient to take formal enforcement action as there was no demonstrable harm.
 25. Mr X told the Council he did not agree with its conclusions. He said the remaining changes ruined the visual amenity of the area and constituted an extension to his neighbour's property. Mr X also suggested the iron railings and planted hedges reduced visibility of pedestrians to the main road and asked the Council to reconsider its decision.
 26. Mr X chased the Council for a response in August 2022 and September 2022.
 27. In September 2022, the Council completed a non-enforcement report and decided to close its enforcement case. It considered a breach of planning control had occurred, but no significant or harmful impacts had been identified so it would not be proportionate to continue with full enforcement action.
 28. The Council wrote to Mr X in October 2022. The Council acknowledged the land had not been fully restored to its original state but said it no longer appeared to be maintained as a garden. The Council said it did not consider it was appropriate to

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- take further action as there was no demonstrable harm caused by the way the land now stood. Because of this, it had closed its enforcement case.
29. Mr X responded to the Council to disagree with its decision not to take further action. He said he was surprised the Council felt there was no demonstrable harm and believed this would encourage other residents to extend their own property into public open space.
 30. The Council reiterated that, while the land was not completely back to its previous state, it did not consider there was sufficient harm to warrant formal enforcement action. The Council explained formal enforcement action is discretionary and should be proportionate to the harm caused by any development rather than punitive. The Council said if any further works took place, it would consider them on their own merits.
 31. In November 2022, the Council wrote to Mr X again. It said it had visited the site once more and still believed there was no material harm to justify formal enforcement notice. The Council said the iron railings were similar to others in the area and appropriate in their context. It said this was only across the front side of the open space and did not inhibit access to the path or the space itself. The Council said none of the changes constituted a change of use and it remained comfortable with the previous decision to close the file as it would not be proportionate to take further action.
 32. Mr X disagreed with the Council. He said he felt the land had been changed into an extension of his neighbour's garden and questioned why the Council had now gone back on its request for the land to be fully restored to its former state.
 33. As Mr X continued to disagree, the Council agreed to consider his points through its complaint process.
 34. In December 2022, the Council responded to Mr X. It identified he was complaining enforcement action was ineffective and the Council had failed to carry forward the decision to have the land restored to its previous state. The Council said it had reviewed its previous correspondence with Mr X and believed it had already answered his concerns and had nothing further to add. The Council said it could find no evidence it had failed to deliver its services to the level it would expect and had not upheld his complaint. The Council explained Mr X could appeal this decision if he disagreed.
 35. Mr X asked the Council to move his complaint to the next stage of its complaint process and it responded further in January 2023. The Council said it had addressed all of Mr X's concerns previously and had nothing further to add. It said he could now contact the Ombudsman if he remained dissatisfied.
 36. Mr X brought his complaint to the Ombudsman in February 2023.

Analysis

37. The Ombudsman is not a planning authority. We cannot determine whether a breach of planning control has occurred and, if so, what action should be taken to resolve it. Instead, we investigate how the Council has considered matters and whether it has acted in accordance with the law, guidance and its own enforcement objectives.
38. Mr X has said he feels the Council ought to ensure the land is fully restored to its previous state. It is not for the Ombudsman to say what action the Council should take and so I do not find fault here.

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39. That said, we expect councils to carry out thorough investigations into enforcement complaints and consider the full range of enforcement options open to them. Even if a council decides not to take enforcement action, we expect it to record its reasons and explain its decision to any complainants. We would expect the council to do so without unnecessary delay.
40. After the Council received Mr X's complaint, it visited the site and identified an unauthorised change of use which it felt was unlikely to have been approved had it received an application. It engaged informally with Mr X's neighbour, asking them to put the land back how it was originally. I find no fault with the Council's actions here. It assessed the situation and entered informal negotiation in line with its usual process.
41. Following the deadline, it had given Mr X's neighbour, the Council returned to reinspect the land. While the land had not been fully restored to its previous state, the Council decided the remaining changes were not sufficiently harmful to warrant formal action. It updated Mr X with its decision and reasons and closed its enforcement case. I do not find fault with the Council's actions here. It followed its usual process to reinspect after the deadline for informal action and decided not to use its discretionary enforcement powers.
42. Mr X has said he feels the Council has gone back on its previous decision to ask for the land to be fully restored to its previous state. I appreciate Mr X's point, but the Council is entitled to reinspect the land and come to another decision once changes have occurred. I do not find the Council at fault here.
43. I have considered the Council's enforcement report, and this shows the Council gave full consideration to the changes Mr X complained about before reaching its decision not to pursue formal enforcement action. I do not find fault with the Council's decision-making process.
44. However, the Council is responsible for causing Mr X significant uncertainty by failing to keep him updated and for delays in taking action. The Council visited the site promptly and decided there was an unauthorised change of use but it took around five months to contact Mr X's neighbour. The Council then promptly reinspected the site once its deadline to rectify had passed and noted it felt it would not be proportionate to take further action. However, it then took another four months to decide not to pursue further enforcement action, and only after Mr X chased it. This is fault and the resulting uncertainty is injustice.
45. The Council's policy explains the timescales for resolving a complaint can be lengthy and difficult to predict, but it will keep complainants updated. This does not appear to be the case here as Mr X had to continually contact the Council for updates. This is fault and caused Mr X to go to the time and trouble of having to chase the Council which is injustice.

Agreed action

46. To remedy the injustice set out above, I recommended the Council carry out the following actions:
47. Within one month:
- Issue an apology to Mr X for the injustice identified above.
 - Pay Mr X £100 for the uncertainty caused by the delays.
48. The Council has agreed to these recommendations and should provide us with evidence it has complied with the above actions.

Final decision

49. I find the Council at fault for delays in its enforcement process and for failing to keep Mr X updated. The Council agreed to my recommendations, and I have ended my investigation.

Investigator's decision on behalf of the Ombudsman