

Complaint reference:
16 003 394

Complaint against:
Gedling Borough Council

The Ombudsman's final decision

Summary: The Council delayed looking into a complaint about business use at a residential property. Also a delegated decision report did not include a detailed justification of why a proposed development was acceptable.

The complaint

1. Mrs X complains the Council gave inadequate consideration to the effect of a development on her residential amenity. She says the plans did not accurately show the position of the summerhouse. She also complains the Council failed to take action about her complaint the neighbour was running a business.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)

How I considered this complaint

3. As part of the investigation, I have:
 - considered the complaint and the documents provided by the complainant;
 - made enquiries of the Council and considered the comments and documents the Council provided;
 - discussed the issues with the complainant;
 - sent my draft decision to both the Council and the complainant and invited their comments.

What I found

4. Mrs X's neighbour submitted a planning application for a rear extension and summerhouse. The Council notified Mrs X and she made objections.
5. The Council considered the application under delegated authority. It produced a delegated decision report setting out the main issues for consideration. The Council considered the application and granted conditional planning consent.

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6. Mrs X contacted the Council in February 2016. The neighbour had begun work on the summerhouse. She was concerned about its position and the neighbour was running a business. The Council acknowledged her query but no further action was taken.
 7. In April, an enforcement officer visited the neighbour. He took measurements of the summerhouse and found it was the correct size but it had not been built in the exact position shown on the plans. The Council wrote to the neighbour asking him to submit an application for a variation of condition showing the actual position of the summerhouse. The neighbour chose not to put in such an application.
 8. The Council took the view the position of the summerhouse would not have any greater impact on neighbours and so decided it would not take formal enforcement action.
 9. Dissatisfied with the lack of response from the Council, Mrs X complained to the Ombudsman in July. On 1 August I wrote to the Council making enquiries on her complaint.
 10. The Council made an unannounced visit to Mrs X's neighbour on 3 August. It inspected the summerhouse and spoke to the neighbour. The Council says there was no evidence of a business operating from the property. The Council emailed Mrs X to tell her of the action.
 11. The Council made a further unannounced visit to the neighbour on 9 August. Notes of the visit show it inspected the inside all buildings including the dwelling and the summerhouse. It found some large machinery in the summerhouse but no evidence a business was operating. The Council emailed Mrs X the following day to update her and suggested she keep a diary of activities if she still thinks a business is operating.

Analysis

12. The Council produced a delegated decision report showing how it considered the planning application. The report includes details of the history of the site, consultation and neighbour responses and its analysis of the application. While it gives the officer's professional judgement that the proposal will not have a significant detrimental effect on neighbouring amenity, it does not go into any detailed explanation.
13. The Council, in response to my enquiries, accepts a delegated report should normally include a more detailed justification especially because of the neighbour objections received. The failure to include a more detailed justification is fault. However, I am not saying the Council did not consider the relevant factors in this case or that the decision would have been different. The failure to provide a more detailed justification leaves Mrs X with uncertainty about why the Council approved the application.
14. Mrs X complained the plans did not show the position of the summerhouse. The plans submitted to the Council show the rear boundaries with neighbouring properties and are drawn to scale. I am therefore satisfied the Council did know the proposed position of the summerhouse when considering the application.
15. The Council has taken measurements of the summerhouse as built. It found the dimensions were correct but it was positioned wrongly. The Council wrote to the neighbour asking him to submit an application for a variation of condition to regularise this difference but the neighbour chose not to. The Council considered

the situation and decided there was no significant impact to the neighbours. It used its professional judgement to decide formal enforcement was not expedient. I find no fault by the Council on this point.

16. Mrs X complained in February the neighbour was running a business from his residential property. The Council did not investigate this until after I made enquiries in August 2016. The Council conducted unannounced visits and found no evidence the neighbour was operating a business. It told Mrs X promptly of the result of its visits.
17. The Council's delay in investigating the complaint about a business operating is fault. I cannot comment on the decision not to take further action as that is a matter of professional judgement.

Agreed action

18. To remedy the fault identified in this case the Council will apologise to Mrs X and pay her £250 to recognise its failings.

Final decision

19. As the Council has agreed to provide an appropriate remedy I will not investigate the complaint further.

Investigator's decision on behalf of the Ombudsman