

The Ombudsman's final decision

Summary: We will not investigate this complaint about the Council processing of planning applications. We have seen no reason why the complainant could not have come to us much sooner about events occurring more than twelve months ago. Complaints about these matters are late. Also, the complainant had a right to appeal to the Planning Inspector against non-determination of a planning application. He can also appeal should the Council refuse the application.

The complaint

1. Mr X complains for his client Mr Y. He says the Council provided poor service, failing to raise concerns four years ago. Mr X says if the concerns had been raised at the time his client would not have wasted money on application or architect fees.
2. He wants the Council to refund the planning fees and appoint a new line manager to determine the latest application.

The Ombudsman's role and powers

3. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
4. 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)
5. The law says we cannot normally investigate a complaint when someone can appeal to a government minister. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (Local Government Act 1974, section 26(6)(b), as amended)
6. The Planning Inspector acts on behalf of the responsible Government minister. The Planning Inspector considers appeals about:
 - Delay – usually over eight weeks – by an authority in deciding an application for planning permission
 - A decision to refuse planning permission

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- Conditions placed on planning permission
 - A planning enforcement notice.

How I considered this complaint

7. I considered information provided by Mr X and the Council.
8. I considered the Ombudsman's Assessment Code.

My assessment

9. I have seen no reason why Mr X could not have raised concerns about poor service much sooner. I have seen no reason why we should consider events occurring more than twelve months ago.
10. The current planning application is undetermined. There is a right of appeal against non-determination. Alternatively, should the Council refuse the application there will be a right of appeal. The appeal route may not provide a way to resolve all Mr X's concerns. However, the courts have said :

“While a statutory appeal to the Secretary of State against a refusal of planning permission provided no compensation for the delay which inevitably occurred, the fact was that whenever there was a right of appeal to a Minister there would inevitably be some delay and loss might therefore very well result, as in the present case. Nevertheless, section 26 of the Local Government Act expressly excluded jurisdiction on the part of the respondent in such cases. In those circumstances Parliament must have contemplated that there would arise situations where loss would be suffered and yet the respondent would have no jurisdiction to intervene.”

Final decision

11. We will not investigate Mr X's complaint because there is no reason why he could not have raised concerns about events which occurred more than a year ago. And he can appeal against the Council's failure to determine a planning application within the statutory timeframe. Alternatively, if the Council refuses the application he can appeal to the Planning Inspector against the refusal.

Investigator's decision on behalf of the Ombudsman