

The Ombudsman's final decision

Summary: X complained about the Council's failure to enforce a planning condition that required a landscaping scheme. We found fault which caused an injustice and could happen again. We recommended a remedy which the Council has agreed to carry out.

The complaint

1. The person that complained to us will be referred to as X.
2. X lives in an apartment, for which the Council approved planning permission.
3. X complained that the Council failed to ensure a developer complied with a landscaping scheme approved under a planning condition.
4. X said that much of the land around the apartment building, which should be planted with shrubs and plants, is instead covered with self-seeded grass and weeds. X said that some trees that were planted at the front of the site, died and were not replaced.

The Ombudsman's role and powers

5. We investigate complaints from people 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 significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
6. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement to the Council and the person who complained. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

How I considered this complaint

7. I read the complaint and discussed it with X. I read the Council's response to the complaint and considered documents from its planning files, including the plans and the case officer's report. The Council also provided photos and details of site visits. I interviewed a tree officer, a planning enforcement officer and a planning officer.

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8. I gave the Council and X an opportunity to comment on a draft of this decision and took account of the comments I received.

What I found

Planning law and guidance

9. Councils should approve planning applications that accord with policies in the local development plan, unless other material planning considerations indicate they should not.
10. Planning considerations include things like:
 - access to the highway;
 - protection of ecological and heritage assets; and
 - the impact on neighbouring amenity.
11. Planning considerations do not include things like:
 - views over another's land;
 - the impact of development on property value; and
 - private rights and interests in land.
12. Councils may impose planning conditions to make development acceptable in planning terms. Conditions should be necessary, relevant to the development, enforceable, precise and reasonable in all other regards.
13. Planning enforcement is discretionary and formal action should happen only when it would be a proportionate response to the breach. When deciding whether to enforce, councils should consider the likely impact of harm to the public and whether they might grant approval if they were to receive an application for the development or use.

What happened

14. The Council approved a planning application for the development of additional apartments in the building where X now lives. It imposed a planning condition requiring a soft landscaping scheme, including existing trees and shrubs and those to be planted. The condition said that planting, seeding and turfing should be carried out in the first planting season following completion of the development, and any trees or plants which die, are removed, damaged or diseased in the next five years, should be replaced in the next planting season.
15. About a year after permission was granted, the developer submitted a landscape and planting scheme. The Council discharged the condition. The scheme includes six trees to be planted at the front of the site, near the main road. At the sides and rear the plan shows different types of plants in different areas of the shared garden/parking area.
16. X moved into their apartment about four years ago. They said that soon after they began complaining about the lack of planting. In April last year X got responses from the Council, which were late and failed to address all the issues raised. In particular, the Council failed to comment on the lack of shrubs and plants at the rear of the building. The Council's responses to X's complaints only referred to trees.

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17. I checked the extent of delays between two main complaints and the Council's responses. The stage one response took a month to send, which is about two weeks late. The stage two response took three months to send, which is about two months late. The Council apologised for the delays.
 18. I read the Council's responses to X's complaints, and they do only refer to trees, not the shrubs and plants that were also included in the landscaping scheme.
 19. During my investigation, I asked X to take photos to show me the current state of the site and I interviewed a tree officer about the site.
 20. The tree officer looked at the photos and visited the site to view it from the street. They also looked at aerial photos of the site taken over a number of years.
 21. The tree officer said:
 - that there were only three trees planted at the front of the building, not the six shown in the condition discharge plans;
 - that the photos did not show shrubs were planted, but that it looked like the ground once laid to lawn had been taken over by weeds;
 - there was one bed with one flower, which could have been planted, but the area looked to be dominated by weeds and had lacked aftercare;
 - they had not been consulted on this issue and was not an expert on shrubs or plants. The officer went on to say that they did not think the Council employed its own landscape officer but relied on external advisors as necessary.
 22. The planning enforcement officer I interviewed told me:
 - the Council had served a breach of condition notice more than three years ago requiring the landscaping scheme to be implemented, and the case was later closed. However, there is no evidence to show that the shrubs required under the scheme were ever planted;
 - that there was still a breach of the landscape planning condition, because the shrubs had not been planted and some of the trees that died had not been replaced.
 - the Council can still enforce the condition and the case was re-opened recently. The records show an enforcement officer was in the process of negotiating improvements with the managing agent to enforce the terms of the condition;
 - the planning enforcement service was struggling to carry out its work because of lack of staff. Caseloads were very high, staff turnover high, reliance on agency staff for short periods was common, there was no administrative support and officer wages were lower than are offered by other authorities. Because of this, it was difficult to recruit and retain staff and it was impossible for officers to give the attention they would want to their cases. It also leads to difficult decisions being made about priorities.
 23. The planning officer I interviewed told me:
 - the landscaping condition was probably included in the decision notice, because a landscaping scheme had been offered by the applicant as part of the proposal. However, as the application was for additional apartments, and there were already trees and landscaping around the site, it would be difficult to say it was necessary to require a landscaping scheme;

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- if an intention to landscape the grounds had not been included, it was doubtful a planting scheme would have been required;
 - if the developer had submitted an application to vary or remove the landscaping condition, it could be difficult to refuse. The questions a planning officer has to ask in these circumstances are, does the condition go to the heart of the permission, and is it necessary for the proposal?
24. X told me that the managing agent does appear willing to help. X said there are site management charges to leaseholder for landscaping and a budget is available for planting. X said the agent wants to improve the site but is waiting to be told what they need to do to comply with the landscaping scheme.

My findings

25. It is now several years since X first started complaining to the Council, and some trees that have died have not been replaced and I have seen no evidence to show that any shrubs identified in the planting scheme were ever planted.
26. The failure to enforce the requirements of a planning condition is fault. Plants can die if not properly maintained, and several planting seasons have passed, which are missed opportunities for plants to be established.
27. The failure to enforce caused X frustration, disappointment and avoidable time and trouble.
28. The planning enforcement officer explained the difficult circumstances faced by officers working in planning enforcement. Although it is difficult to know exactly why the faults I have found happened, it is likely that high caseloads, low officer numbers and poor staff retention played a significant role.
29. I recommended a remedy to recognise the injustice, and which could avoid recurrence of similar faults happening again.
30. The Council accepted my recommendations but asked for more time to carry it out. The Council also pointed out that, due to budgetary constraints, there is currently a moratorium on advertising to recruit. Because of this, if the review concludes that staffing levels need to be increased, this may not be possible.

Agreed action

31. To remedy the fault I have found and to avoid recurrence in future, the Council agreed to:
- a) apologise to X and pay them £150 for the frustration, disappointment and avoidable time and trouble. This should happen within four weeks of the date of my final decision.
 - b) carry out a review of its planning enforcement service to determine whether it has the resources it needs to carry out its functions. The outcome of the review should be reported to the relevant scrutiny committee. This should happen within six months from the date of our final decision.
32. The Council should provide us with evidence it has complied with the above actions within the time limits required.

Final decision

33. I found fault causing injustice that might happen again. I completed my investigation because the Council agreed to my recommendations.

Investigator's decision on behalf of the Ombudsman