

Complaint reference:
14 015 705

Complaint against:
Wyre Forest District Council

The Ombudsman's final decision

Summary: The Ombudsman has stopped investigating this complaint about planning advice. This is because the complaint is late, and there are no good reasons to investigate now.

The complaint

1. Mr B complains that a Council Officer wrongly told him that he did not need planning permission to build a wall.

The Ombudsman's role and powers

2. The Ombudsman cannot normally investigate late complaints unless she decides there are good reasons. Late complaints are when someone takes more than 12 months to complain to the Ombudsman about something a council has done. *(Local Government Act 1974, sections 26B and 34D)*
3. The Ombudsman cannot investigate a complaint if someone has appealed to a government minister. The planning inspector acts on behalf of a government minister. *(Local Government Act 1974, sections 26(6)(b))*

How I considered this complaint

4. I have:
 - considered the complaint and the documents provided by the complainant;
 - discussed the issues with the complainant;
 - considered information on the Council's website;
 - given the Council and the complainant the opportunity to comment on my draft decision.

What I found

5. Mr B bought his house in 2010. Before moving in he applied for planning permission to build a detached garage.
6. Mr B says that he told the Council that he also wanted to build a wall along the front boundary of his property. He says the Council Officer told him that he would not need planning permission to build the wall as long as it was less than one metre tall. Mr B then built the wall.
7. The Council granted planning permission for the garage in February 2011. The decision notice states:

“Notwithstanding the details on the approved plans the permission hereby granted refers to the garage alone. The wall shown along the periphery of the site does not benefit from planning permission.”

8. In June 2011, the Council wrote to Mr B to say that the wall was unauthorised as he did not have planning permission for it. The Council wrote to Mr B again in September 2011 requiring him to remove the wall.
9. In 2012, Mr B submitted an application for a Certificate of Lawfulness for the wall. The Council refused the application.
10. The original planning permission to build the house in 1990 included a condition which states

“Notwithstanding the provisions of the Town and Country Planning General Development Order 1988, or any order revoking and re-enacting that order, no fences, gates or walls shall be erected within the curtilage of any dwelling house forward of any wall of that dwelling house which fronts onto a road, or private drive.”

11. In July 2013, the Council issued a Breach of Condition Notice to Mr B stating that this condition had been breached. It required him to remove the wall. There is no right of appeal against a Breach of Condition Notice.
12. Mr B then applied for planning permission for the wall so, if the Council refused the application, the Planning Inspector could independently consider the merits of retaining the wall. The Council refused planning permission and Mr B appealed the decision. The Planning Inspector dismissed the appeal in December 2013.
13. Mr B says that he would not have built the wall if the Council had not wrongly told him that it would not need planning permission. He considers he is being unfairly treated because the Council has not taken formal action against the owners of other properties on the estate who have built similar walls and fences.

Analysis

14. As explained in paragraph two, the Ombudsman will not investigate a late complaint unless there are very clear reasons for doing so. There would need to be a realistic prospect of reaching a sound, fair, and meaningful decision and the Ombudsman would need to be satisfied that the complainant could not reasonably be expected to have complained sooner.
15. Due to the passage of time, I do not consider it likely that I would be able to reach a sound and fair decision about events that took place in 2010 and 2011. Mr B did not make a formal request for planning advice. He says that the Officer gave him the planning advice verbally. I have not seen any documents which confirm that Mr B was given this advice.
16. I also consider it would have been reasonable for Mr B to complain within 12 months. Mr B found out in July 2011 that the wall needed planning permission. If he was unhappy with the advice he had been given before he built the wall, he could have complained within 12 months of July 2011. I recognise that Mr B has sought to resolve the matter by other methods, such as applying for planning permission and appealing to the Planning Inspectorate. But Mr B has known since 2011 that the Council required the wall to be removed. I consider it would have been reasonable for Mr B to complain about the advice he received within 12 months.

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17. The Planning Inspector upheld the Council's decision that the wall is harmful and unacceptable development. As explained in paragraph three, the Ombudsman cannot consider a matter that has been the subject of an appeal to the Planning Inspectorate.
 18. The Planning Inspector noted the examples provided by Mr B of other walls in the area. He considered they did not provide a direct comparison. I have not investigated how the Council has dealt with other walls in the area. This is because I do not consider investigation is likely to find evidence of fault. I also do not consider it has caused Mr B any significant injustice.

Final decision

19. I have stopped investigating this complaint because it is late, and I do not consider there are good reasons to investigate now.

Investigator's decision on behalf of the Ombudsman