

The Ombudsman's final decision

Summary: Mrs X complains about the Council's actions in relation to a breach of building regulations. She says she has suffered stress and financial loss as a result. The Ombudsman finds no evidence of fault causing significant injustice in the Council's actions.

The complaint

1. Mrs X complains about the Council's actions in relation to a breach of building regulations. She says she has suffered stress and had to sell her property at £80,000 below market value as a result.

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 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*)
4. If we are satisfied with a council'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 Mrs X and considered her complaint. I also reviewed documents provided by the Council. I have Mrs X and the Council the opportunity to comment on a draft of this decision and I considered the comments provided.

What I found

Enforcement action

6. A council cannot serve an enforcement notice for a breach of building regulations, once twelve months have passed. And, a council cannot pursue a prosecution for a breach of building regulations, once two years have passed.

-
7. A council cannot take enforcement action for a breach of planning control on a home, once four years have passed. After four years, the developer can apply for a Certificate of Lawfulness to confirm the building is lawful for planning purposes.

What happened

8. The Council says an individual divided a house into two flats in the 1990's. The individual did not have planning permission or building regulations approval. However, the Council did not know about this until 2004. Due to the passage of time the Council cannot say why it did not take any action in 2004.
9. In 2005 the individual applied for a Certificate of Lawfulness for the two flats. The Council says it issued the Certificate confirming it could not take enforcement action for breach of planning control.
10. In 2007 Mrs X bought one of the flats.
11. In 2008 the Council's Building Control team placed an informal notice on the Land Charges Register to say the property did not have building regulations approval. The Council wrote to the individual to give notice of this. The Council did not write to Mrs X.
12. In 2015 Mrs X tried to sell her flat and discovered the notice. She complained to the Council that it had failed to place the notice before she purchased the flat and it had failed to tell her once it placed the notice.
13. The Council told Mrs X it could not say why it did not place an informal notice in 2004. However, it said her solicitor should have warned the flat did not have building regulations approval. The Council accepted it should have told Mrs X when it placed the notice in 2008. It apologised for this.
14. Mrs X then contacted the Ombudsman. She accepts her solicitor should have told her about the lack of building regulations approval. However, she says the problem now is the notice on the register, which is putting off buyers and mortgage lenders. She asked the Council to remove the notice but it refused.

Findings

15. Mrs X's complaint is late. However, she says she spent some time trying to resolve matters by taking out an indemnity policy and she had a period of ill health. Bearing this in mind, I consider there are good reasons to investigate this late complaint.
16. The Council could not take formal enforcement action for breach of planning or building control, as it was not aware of the development within the relevant time periods.
17. The Council could have placed an informal notice for the breach of building regulations in 2004, but it did not do so. I cannot investigate this matter further because the Council no longer has records. However, even if I were to find fault by the Council, I consider this did not cause Mrs X significant injustice. This is because it is reasonable to expect Mrs X's solicitor to have told her the property did not have building regulations approval, prior to purchase.
18. The Council did not tell Mrs X once it placed the informal notice on the register in 2008. The Council accepts it should have done so. Mrs X says if she was aware of the notice in 2008 she could have taken action against the seller. However, I find the Council is not responsible for any injustice to Mrs X. This is because it was reasonable to expect Mrs X's solicitor to have told her about the lack of

building regulations approval, prior to her purchase. Further, I cannot say whether any action against the seller in 2008 would have been successful.

19. Mrs X says she took out an indemnity policy to cover the lack of business regulations approval but the notice on the register continued to cause problems. And, the Council refused to remove this notice. However, I find no fault in this regard. The Council was entitled to take informal enforcement action by placing a notice on the register and it is not obliged to remove this.

Final decision

20. I have completed my investigation. This is because I find no evidence of fault causing significant injustice in how the Council dealt with a breach of building regulations.

Investigator's final decision on behalf of the Ombudsman