



Northern Ireland
Public Services
Ombudsman

Investigation Report

Investigation of a complaint against Belfast City Council

NIPSO Reference: 21178

The Northern Ireland Public Services Ombudsman
33 Wellington Place
BELFAST
BT1 6HN
Tel: 028 9023 3821
Email: nipso@nipso.org.uk
Web: www.nipso.org.uk
 @NIPSO_Comms

The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

TABLE OF CONTENTS

	Page
SUMMARY	4
THE COMPLAINT	5
INVESTIGATION METHODOLOGY	6
THE INVESTIGATION	7
CONCLUSION	21
APPENDICES	24
Appendix 1 – The Principles of Good Administration	
Appendix 2 – The Principles of Good Complaints Handling	

SUMMARY

I received a complaint about the actions of Belfast City Council. The focus of the complaint was in relation to a planning approval for a new housing development beside the complainant's property. The complainant said that enforcement action about the planning approval was not conducted appropriately nor in a timely manner. The complainant was also unhappy that the Council accepted changes to the planning approval as a Non Material Change (NMC). The complaint also focused on the complaints handling process by the Council.

My investigation found maladministration in relation to how the enforcement action was conducted and the delay in responding to the complainant's queries regarding this. My investigation also found maladministration in relation to complaints handling. I did not identify any failures regarding the NMC application. I considered that the failings caused the complainant to suffer the injustice of frustration and uncertainty.

I recommended that the Council apologise to the complainant for the failures identified and feedback to the staff involved in relation to these as part of the council's staff appraisal process.

THE COMPLAINT

1. I received a complaint about the actions of Belfast City Council (the Council). The focus of the complaint was in relation to a planning approval for a new housing development beside the complainant's property. The planning application for this development was approved on 13 October 2009. In February 2016 the complainant contacted the Council as he believed that the location of the foundations were not in accordance with the plans approved under the planning application. The Council opened up a planning enforcement case on 16 March 2016. The complainant said that the enforcement action was not completed in a timely manner. The housing development developer applied for a Non Material Change (NMC) application, which was considered and approved by the Council in July 2016. The complainant was unhappy that this was accepted as an NMC as he was not afforded the opportunity to comment and/or object to the changes proposed as part of the NMC application. The complainant also raised concerns about the Council's handling of the complaint.

Issues of complaint

2. The issues of complaint accepted for investigation were:

Issue 1: Whether the Council's enforcement investigation was conducted appropriately and in accordance with the relevant standards?

Issue 2: Whether the Council dealt with the Non Material Change application appropriately and in accordance with the relevant standards?

Issue 3: Whether the Council's management of the complaint was appropriate, timely and in accordance with the relevant standards?

INVESTIGATION METHODOLOGY

3. In order to investigate this complaint, the Investigating Officer obtained from the Council all relevant documentation together with its comments on the issues raised by the complainant. This documentation included information relating to the Council's handling of the complaint.

Relevant Standards and Guidance

4. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. I also make reference to relevant regulatory, professional and statutory guidance.

The general standards are the Ombudsman's Principles²:

- The Principles of Good Administration
- The Principles of Good Complaints Handling
- The Public Services Ombudsmen Principles for Remedy

5. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- Department of Infrastructure, Development Management Practice Note 25 - Non Material Change, April 2015 (NMC Guidance);
- Department of Infrastructure, Enforcement Practice Notes 1 to 4, October 2016 (Enforcement guidance);
- Planning (General Development Procedure) Order (Northern Ireland) 2015;

² These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- Planning Act (Northern Ireland) 2011; and
 - Belfast City Council, Complaints, Comments and Complements Procedure (Council's Complaints Procedure).
6. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the Council. It is not my role to question the merits of a discretionary decision taken unless that decision was attended by maladministration.
 7. I did not include all of the information obtained in the course of the investigation in this report but I am satisfied that I took into account everything that I consider to be relevant and important in reaching my findings.
 8. A draft copy of this report was shared with the complainant and the Council for comment on factual accuracy and the reasonableness of the findings and recommendations. Following receipt of a copy of the draft report, both the Council and the complainant informed me that they accepted its contents.

INVESTIGATION

Issue 1: Whether the Council's enforcement investigation was conducted appropriately and in accordance with the relevant standards?

Detail of Complaint

9. The complainant said that the enforcement action carried out by the Council was not completed correctly or in a timely manner. The enforcement case related to the complainant's concerns that the distance between dwelling 12 (the dwelling) on the site and the complainant's boundary wall was marked as three metres on the approved drawings.

10. The complainant notified the council on 7 March 2016 that he suspected that planning control was breached. He believed the new foundations of the dwelling were located too close to the boundary wall between his property and the dwelling. The Council conducted a site visit on 16 March 2016 and advised the complainant via telephone that there was no breach of planning control. The complainant was unhappy and corresponded further with the council. The Council subsequently conducted another site visit on 27 September 2016. Following further review of the measurements the Council discovered that the actual distance between the foundations of the dwelling and his boundary wall was in fact 2.1 metres. However, the distance on the approved drawings of the planning application was detailed as 3 metres. The Council informed him that the foundations of the dwelling were built in accordance with the approved layout plan and were in the correct position. The discrepancy of distance was due to an initial surveying error and that a formal enforcement action would not be justified in this case. The complainant said that the enforcement action was not carried out correctly as the original site visit did not pick up on the distance discrepancy. He said by the time the Council investigated and responded to the complainant on November 20, the building work was significantly advanced on site.

Evidence Considered

Legislation/Policies/Guidance

11. I considered the Enforcement guidance which defines expediency as;
'8.1 Enforcement action against a breach of planning control may be taken when a council regards it as expedient to do so. Whilst not formally defined, expediency is taken as a test of whether an unauthorised development or activity is causing unacceptable harm to the environment and / or public amenity, having regard to the provisions of the local development plan and to any other material considerations. It would be appropriate for councils, in determining what (if any) enforcement action is to be taken, to give priority to

those breaches where in a council's opinion the greatest harm is being caused. It is considered good planning practice that any action taken against a breach of planning control shall be proportionate to the breach.'

I further considered the advice on how to conduct an enforcement investigation
'The enforcement officer should compile a comprehensive report which covers all the salient facts and issues. All information collected must be recorded appropriately. This includes conversations at site visits and on the telephone. It would be good planning practice for the report to include information on the following:

- (1) nature of breach;*
- (2) site address;*
- (3) site description;*
- (4) planning history;*
- (5) policy background;*
- (6) other material considerations;*
- (7) assessment of the case; and,*
- (8) recommendation and reasoning.'*

The Council's response to investigation enquiries

12. The Council stated that it is *'satisfied that the enforcement complaint was properly investigated. Several site visits were conducted and on site measurements carried out.... Dwelling 12 measured on site at 2.1m from the western boundary, on the approved drawing this distance was measured at 3m. However the Council is content that Dwelling 12 is located in its correct footprint on the site as shown in the approved drawings and that any discrepancies with*

the separation distance from the Western boundary are as a result of an initial surveying error. The Council is satisfied that as the footprint of the dwelling is in the correct location, it would not be in the public interest or expedient to pursue enforcement action.

13. *The Council stated 'There is no specific policy or guidance and it is a matter of judgment for the Planning Authority to decide whether it is in the public interest to take enforcement action. Article 3 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 sets out the requirements for a 'valid' planning application. It requires that an application must be accompanied by (a) by a plan (i) sufficient to identify the land to which it relates; and (ii) showing the situation of the land in relation to the locality and in particular in relation to neighbouring land; and (b) by such other plans and drawings as are necessary to describe the development to which it relates. This may have affected the validity of the planning application at the time. However, since the decision was never challenged it remained lawful. Planning officers do not routinely take detailed measurements of application sites when they carry out their site visits and normally only very obvious discrepancies will be apparent. It is the responsibility of the applicant to make a valid application and any discrepancies, depending on their nature, could render an approved development un-implementable.*

14. *The relationship of a dwelling with the boundaries to the site and separation distances to neighbouring properties are relevant material planning considerations.... However, the reason why it was deemed that there was not a breach of planning control in this case is because the dwelling is located in its correct footprint on the site as shown on the approved drawings and that any discrepancies with the western boundary as a result of an initial surveying error. The Council is satisfied that as the development is in compliance with the approved plans, it would not be possible or in the public interest to pursue enforcement action. It is entirely at the discretion of the Council to make this judgment.'*

Relevant Council records

15. I considered a letter of objection the complainant submitted to the planning application dated 18 January 2009.

16. I considered the notes from the Enforcement Report dated 16 March 2016 *'A site visit was carried out on 15 March 2016 to establish the distances of where the foundations have been dug to compared with the approved plans. All relevant measurements were taken and were confirmed to be compliant with approved plans...'*
The document further states *'While it is apparent that no breach of planning control is evident at this time, it is recommended that this case is monitored until this is confirmed that no enforcement action is necessary.'*

17. I reviewed the enforcement case closure form dated 2 April 2019 *'Dwelling 12 measured on site at a minimum distance of 2.1 m from the northern boundary, the corresponding measurement on drawing 02A measures 3m. After the number of site visits I feel that dwelling number 12 is located in accordance with the approved layout plan. Although dwelling 12 is in the correct position within the site, the distance to the boundary is inconsistent with the approved drawing. We can only attribute the different between the on-site measurement, taken at dwelling 12's minimum distance to the northern boundary and that taken from the approved plan to be result of an initial surveying error...'*

Analysis and Findings

18. The complainant said the enforcement investigation was not completed accurately nor in a timely manner. I considered the response from the Council which stated that it found that planning control was not breached as the site is *'located in the correct footprint'* and the error was due to *'an initial surveying error'*. The Council also advised that *'There is no specific policy or guidance and it is a matter of judgment for the Planning Authority to decide whether it is in the public interest to take enforcement action.'* I

reviewed the timeline of events and communication between the complainant and the Council. I note the first site visit was conducted in March 2016, and the notes detail that '*all relevant measurements were taken and deemed to be compliant.*' The document also advises that the case should be '*monitored until this is confirmed that no enforcement action is necessary.*' I was not provided with any evidence by the Council to demonstrate that the site was monitored from March 2016 until the site visit in September 2016. I note the second site visit conducted in September 2016 details that there was a discrepancy in distance which was communicated to the complainant via letter.

19. I reviewed the Enforcement guidance which provides guidance on how to undertake a site visit. It states that the officer should '*compile a comprehensive report which covers all the salient facts and issues*'. It is evident that the officer in question did not measure the distance accurately at the March 2016 site visit. I refer to the first Principle of Good Administration, '*getting it right*'. This principle requires public bodies to '*follow their own policy and procedural guidance*' and '*take account of all relevant considerations*'. The officer failed to measure the distance accurately on the first site visit, thus the enforcement investigation was not accurate in its conclusions as there was a discrepancy in distance between the complainant's boundary and the footprint of the dwelling. Furthermore, there is no evidence that the site was monitored as was the recommendation in the report.
20. The complainant also had to contact the Council on two occasions, it took a further six months for the Council to act on the complainant's concerns and return to the site. I considered the third Principle of Good administration which states that public bodies should be '*Customer focused*' and should deal with complainants '*...promptly and sensitively, bearing in mind their individual circumstances.*' The Council responded to the complainant with its initial findings within 10 days in March 2016. However it took six months for the Council to conduct a further investigation into the site. I consider the Council failed to accurately carry out the original enforcement investigation

in March 2016 and failed to monitor the site in subsequent months. I also consider the Council failed to respond to the complainant's concerns in a timely manner. I consider that these failings constitute maladministration.

21. I consider these failings caused the complainant to suffer the injustice of frustration as the Council did not accurately measure the site and the complainant had to write to the Council on two occasions to further follow up on his concerns. However, I do not consider that if the site had been measured correctly in March 2016 that this would have affected the Council's decision in terms of whether to pursue further enforcement action. This is because the Council have discretion to decide on what enforcement action should take place. The Enforcement guidance states that *'Enforcement action against a breach of planning control may be taken when a council regards it as expedient to do so.'* I am satisfied on the basis of the subsequent recorded rationale recorded by the Council that if it had measured the distance correctly at the original site visit, the outcome would on the balance of probabilities have been the same. The complainant considered that the stage of development affected the Council's consideration of the alleged breach of planning control. I fully understand the complainant's concern in this regard. However, I have not identified any evidence that this was the case.

Issue 2: Whether the Council dealt with the Non Material Change application appropriately and in accordance with the relevant standards?

Detail of Complaint

22. An NMC application was reviewed and approved by the Council in July 2016. The complainant was unhappy that the change to the site was accepted as an NMC as he was not afforded the opportunity to comment and/or object to the changes proposed as part of the NMC application. As the application was accepted as a NMC, there was no obligation for the Council to notify neighbours. However, the complainant said the proposed

changes were major enough that treating same as an NMC was incorrect. The proposal included altering the 2.4m driveway at the sides of dwellings 14 and 15 and providing each with a 1.2m path, separated by a fence. It also proposed the relocation of dwelling numbers 15 & 16 away from the boundary to the complainant's property and closer to dwellings 13 & 14.

Evidence Considered

Legislation/Policies/Guidance

23. I reviewed the NMC guidance which states:

7.1 There is no statutory definition of a non-material change. This is because it depends on a range of factors including the context of the overall scheme, the amendments being sought to the original permission and the site specific circumstances, all of which can vary from one application to another.

7.2 Discretion rests with a council as to whether the amendments constitute a non-material change to a planning permission within the scope of the original permission.

7.3 A judgement on 'materiality' in any particular case, is one of fact and degree, along with taking into account the likely impact of the amendment on the local environment. Materiality is considered against the development as a whole, not just part of it. The basis for forming a judgement on materiality is always the original planning permission. The cumulative effects of any previous amendments need also to be assessed against any original permission.

7.4 There cannot be a set of prescriptive rules to what is or is not 'material', as each case is different and considered on its individual merit. This is a matter for each council to decide.

7.5 In deciding whether or not a proposed change is non-material, consideration should be given to the effect of the change, together with any previous changes made to the original permission. A local council may wish to assess whether a proposal change may give rise of any of the following:

- 1. any potential conflict with planning policy;*
- 2. any alteration to the application site boundary;*

3. *any potential conflict with any of the conditions on the planning permission;*
4. *an exacerbation of concerns raised by third parties at the original application stage;*
5. *an extension to development already approved;*
6. *an increase in height of the building or extension;*
7. *any potential overlooking of a neighbouring property;*
8. *a material change in the design of the building;*
9. *new works or elements not considered by any environmental statement submitted with the application; and*
10. *the requirement for any consultations to be undertaken or any public advertising or neighbour notification.*

7.6 It should be noted that the criteria above are intended to provide guidance about changes that are likely to be material and therefore not likely to be acceptable as a non-material change. It is not a comprehensive list and each non-material change application must be considered on its own merits. Furthermore, the criteria are designed to prevent changes being accepted that would have a detrimental impact upon neighbours or amenity in the wider public interest.'

The Council's response to investigation enquiries

24. The Council stated '*Section 67 of the Planning Act (Northern Ireland) 2011 makes provision for a Council to make a change to any planning application relating to land within its district if it is satisfied that the proposed change is not material... There is no statutory definition of a non-material change and whether or not it is granted is at discretion of the council as Planning Authority*'.
25. The Council further stated that '*judgement on materiality in any particular case is one of fact and degree, along with taking into account the likely impact of the amendment on the local environment. There cannot be a set of prescriptive rules to what is or is not material, as each case is different and considered on*

its individual merit. This is a matter for each council to decide.'

26. The Council stated that '*...due consideration was given to the proposed amendments. The Council determined the application having regard to the Practice Note - the proposed changes were considered minor in nature and were deemed to be de minimis³. As by definition the changes were considered minor and consultation was not necessary nor a procedural requirement of a non-material change application. I am satisfied that this was the correct decision and the appropriate procedures have been followed. It is reiterated that the discretion to grant the non-material changes rests solely with the Council. The Council further advised 'There is no statutory requirement to take into account objections to the original planning application when an application for a Non Material Change is considered.'*

Relevant Council records

27. I considered the Planning Officer's NMC Assessment Form which states the following have been considered in accordance with paragraph 7.5;
- *The proposal does not conflict with planning policy*
 - *No alteration is proposed to the application site boundary*
 - *No potential conflict with the condition of planning approval*
 - *'No objections were received to the original planning application Z/2008/2477/F (no other amendments/extensions have been considered in relation to the proposal)*
 - *An increase in height of the building is not proposed*
 - *There is no potential for overlooking of a neighbouring property*
 - *The change in the design of the building is set out above is considered to be non-material*
 - *The original proposal was not the subject of an environmental statement*
 - *No consultations or neighbour notification are considered necessary regarding the proposed amendments.'*

³ *De minimis* is a Latin expression meaning "about minimal things",

Analysis and Findings

28. The complainant was unhappy that a change was accepted by the council as a NMC and therefore he was not afforded the opportunity as a neighbour to comment or object to the proposed change. I note the Council stated that *'There is no statutory definition of a non-material change and whether or not it is granted is at discretion of the council as Planning Authority'*. The Council further advised that *'the proposed changes were considered minor in nature and were deemed to be de minimis.'* I reviewed the NMC guidance which states that *'Discretion rests with a council as to whether the amendments constitute a non-material change to a planning permission within the scope of the original permission.'*
29. I reviewed the nine items (paragraph 24 refers) which refer to what a Council *'may wish'* to take these into consideration when assessing a NMC application. I also considered the report prepared by the planning officer which details the elements considered by the Council before the NMC was approved. I note it states that *'no planning objections were received for the original planning approval.'* I reviewed the file and note that there were a number of objections including those from the complainant. I am of the view that the Council's failure to record accurate information about an objection in its consideration of the NMC falls short of the standards required by the Principles of Good Administration. The third Principle requires a public body to *'handle information properly and appropriately'*. The fourth Principle requires a public body to ensure that decisions and actions are proportionate, appropriate and fair. I consider this failure to constitute maladministration.
30. However, I note the Council stated that *'There is no statutory requirement to take into account objections to the original planning application when an application for a Non Material Change is considered.'* While I consider the incorrect recording of the initial objections to the planning approval as maladministration, I do not consider that this is sufficient grounds on which to question the merits of the discretionary decision of the Council regarding this

NMC application. Furthermore, I do not consider the complainant suffered an injustice as a result of the inaccurate recording. Therefore I partially uphold this element of the complaint.

Issue 3: Whether the Council's management of the complaint was appropriate, timely and in accordance with the relevant standards?

Detail of Complaint

1. The Complainant said that there were delays in dealing with his complaints. He believed that this made a suitable remedy less likely as the housing development was built during the time of his complaints. As part of the investigation, I examined the Council's complaint correspondence. A chronology of the complaints process was prepared.

Evidence Considered

Legislation/Policies/Guidance

31. The following guidance was considered as part of investigation enquiries. I have highlighted the relevant extracts as follows:

The Council's Complaints Procedure: this is detailed in a leaflet provided to members of the public who wish to raise a complaint or provide a comment or compliment. The leaflet states:

Stage 1

The people who can best deal with a complaint are those that provide the service. In the first instance, you are advised to contact the service's Complaints Office or complete and return a complaints, comments and compliments form. In most circumstances mistakes or misunderstandings can be resolved quickly and informally at this stage.

We respond at this stage within five working days. If longer is needed we will write and explain why and advise a new date.

Stage 2

If you are unhappy with the outcome of Stage 1 you can take the matter further by writing to the Freepost address or contact the relevant service Complaints Office who will ensure your complaint is fully investigated by the head of service or senior manager. You will be asked to detail clearly why you are still not satisfied and what you expect from a further review.

We respond at this stage within 10 working days. If longer is needed we will write and explain why and advise a new date.

Stage 3

If you are unhappy with the Stage 2 investigation you can then contact the director of the department responsible for the service who will carry out a full review of your complaint within 10 working days. If longer is needed we will write and explain why and advise a new date. The council's chief executive will review all papers before a final decision is made and communicated to you.

You will be asked when making a Stage 3 complaint to explain why you are still not satisfied and what you expect from a further review.'

The Council's response to investigation enquiries

32. I reviewed the letter from the complainant on 3 October 2018, which states '*We have had no formal response to our Stage 1 complaint, so we are writing to request, in view of the Council's failure to respond, that our complaint is now escalated to stage 2.*

Relevant Council records

33. The Council stated that it '*provided the complainants with an explanation for the delays in its handling the stage 1 and 2 complaints in its response to the stage 2 complaint, dated 23 January 2019. In that letter the council provided an apology for the delays.*' I note in the Council's response to this letter dated 24 October 2018, the Council stated there had been a mistake and '*recognise that this falls below the standard of service that the Planning Office would wish to achieve*

and I would apologise for the delay and inconvenience that this has caused.'

34. I considered the correspondence from the Council issued on 23 January 2019, which states '*I apologise for the excessive delay in providing a substantive response to your letters.... I wanted to consider the issues you raised in detail and unfortunately this has taken longer than anticipated. I also accept that we should have been more proactive in updating you about when you could realistically expect a response...*'
35. I considered the correspondence from the Council issued on 14 February 2019, which states '*I would like to apologise for the previous delays in responding to your complaints and the issues you have raised, and for the internal reporting errors as identified above. This has been unacceptable. I can confirm that new processes and procedures have been introduced to ensure that such errors and delays do not occur in the future.'*

Analysis and Findings

36. The complainant submitted his complaint to the Council on 27 April 2018. However, this was accidentally closed by the Council on 1 August 2018. The complainant submitted a further letter on 3 October 2018. Due to the error this response evidently did not meet the target response time within the Complaints procedure of five working days. I note the Council responded to this letter on 8 October within 5 working days and advised the complainant that it had been escalated to stage 2 and he would receive a response within 10 working days.
37. A number of letters were sent to the complainant advising that a response would be delayed. I note these letters included an apology to the complainant and an estimated timescale but they did not provide an explanation for the excessive delay. On 17 January 2019, the Council advised it had escalated the complaint to Stage 3 due to the significant delay. The complainant received a response to the Stage 2 complaint on 23 January 2019, 74 working days after his letter in October and 144 working days after his original letter of complaint.

I note the complainant received his Stage 3 response on 14 February 2019. I note the apology and the Council's admission that it should have been '*more proactive about updating you.*'

38. From the evidence provided to me by the Council as part of this investigation, I am unable to ascertain why the Council took so long to investigate the complaint and whether there were any factors that caused the delay. I consider that at every stage of the complaint procedure for this complaint, the response times were not met and the complainant was not provided with any detail by the Council as to why the response was delayed. I acknowledge that the Council apologised to the complainant in all correspondence. However, the delays experienced by the complainant and lack of explanation at all stages were unacceptable. The First Principle of Good Administration, '*getting it right*', requires public bodies to act in accordance with its policy and guidance, and with regard to the rights of those concerned. The Second Principle of Good Administration, '*being customer focused*', requires public bodies to keep to its commitments, including any published service standards, and by dealing with people helpfully and promptly. I am satisfied that the time taken to respond to the complaint demonstrates that the Council failed to meet the requirements of the first and second principles of Good Administration. I find the Council's failure in this regard of concern and I am satisfied that it constitutes maladministration. I am satisfied that this caused the complainant to suffer the injustice of frustration and uncertainty.

CONCLUSION

39. I received a complaint about the actions of the Council in relation to an enforcement investigation, an NMC application and the Council's handling of the complaint.
40. I did not find maladministration in respect of the NMC application. I found maladministration in the following matters;

- I. Failure of the Council to accurately carry out the enforcement investigation in March 2016;
- II. Failure of the Council to monitor the site in subsequent months;
- III. Failure of the Council to respond to the complainant's concerns regarding the enforcement investigation in a timely manner;
- IV. Failure to accurately record the previous objections to the development whilst considering the NMC application;
- V. Excessive delays when responding to the complainant at all stages of the complaint; and
- VI. Failure to act in accordance with policy by providing the complainant with reasons as to why the complaint was delayed.

41. I consider that these failings caused the complainant to suffer the injustice of frustration and uncertainty.

Recommendations

42. I recommend that the Council provides the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice caused as a result of the maladministration identified (within **one month** of the date of this report).

43. I recommend that the Council implements an action plan to incorporate the following recommendations and should provide me with an update within **three months** of the date of my final report. That action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies).

- a. Remind members of staff involved in enforcement investigations that all evidence should be gathered appropriately and correctly at site visits.

- b. Remind staff of the importance of accurately recording information when assessing an NMC application.
- c. I am pleased to note that the Council advised the complainant that new processes and procedures have been introduced to ensure that errors in delays in complaint handling do not occur in the future. However, I
- d. was not provided the evidence of this during the course of the investigation. The council should provide this evidence to me.

A handwritten signature in cursive script that reads "Margaret Kelly". The signature is written in black ink on a white background.

Margaret Kelly

Ombudsman

2 December 2020

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being Customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.