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## London Borough of Bromley (13 001 246)

Category :     [Planning > Planning applications](#)

Decision :     **Upheld**

Decision date :     **28 Aug 2013**

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### The Ombudsman's final decision:

**Summary:** The Council was not at fault in how it determined Mr X's neighbour's planning application. The Council was at fault in how it dealt with Mr X's complaint. Its proposed remedy of £250 to acknowledge the inconvenience caused by its poor complaint handling is fair and proportionate.

# The complaint

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1. Mr X has complained that the Council wrongly validated his neighbour's planning application as his neighbour had completed the incorrect ownership certificate.

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# The Ombudsman's role and powers

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2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She provides a free service, but must use public money carefully. She may decide not to start or continue with an investigation if she believes:
  - it is unlikely she would find fault, or
  - the fault has not caused injustice to the person who complained, or
  - the injustice is not significant enough to justify the cost of her involvement.

(Local Government Act 1974, section 24A(6))

3. The Ombudsman investigates complaints of injustice caused by maladministration or service failure. I have used the word fault to refer to these. She cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3))

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# How I considered this complaint

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4. I have :
  - considered the complaint and discussed the issues with Mr X;
  - made enquiries of the Council and considered its response;
  - invited Mr X and the Council to comment on my provisional view of the complaint;
  - considered Mr X's comments on my provisional view.

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# What I found

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5. Mr X's neighbour submitted a planning application for an extension which included the addition of a pitched roof to an existing garage that is located close to the boundary with Mr X's property. The developer submitted an ownership certificate A with the planning application. This certificate states that the applicant is the owner of the land to which any part of the application relates.
6. The Council notified Mr X of the application. He objected on the grounds that the building could not be constructed and maintained without access from his property.
7. The Council decided the application under officers' delegated powers and granted planning permission. The officer's delegated decision report set out Mr X's objections and the officer's view that his concerns about ongoing maintenance issues were of limited weight in terms of relevant planning issues.
8. Some months later Mr X became aware that the Council had granted planning permission for the development. He made complaints to the Council including the eaves and guttering of the garage would project over the boundary and onto his land, that the development could not be built or maintained without access from his land and that the applicant had completed the wrong ownership certificate.
9. The Council wrongly logged Mr X's complaints as an objection to the planning application. Mr X wrote to the Chief Executive to complain that he had not received a response to his complaint. The Chief Executive referred the letter to a senior officer in the planning department to respond to. Mr X was unhappy with the response so made a further complaint.
10. The officer advised that the purpose of ownership certificates is to notify a landowner to which the application relates is advised of the application. If an incorrect notice was served it did not mean that the application was invalid. The officer also advised that land ownership was not material to deciding a planning application and the Council could not be involved in land ownership disputes.
11. Mr X was unhappy with the response so made a further complaint. The Council issued its final response advising that it was satisfied it had properly considered the planning application but it acknowledged that it had taken too long to respond to his complaint.
12. Mr X reported to the Council that the development was not being built in accordance with the approved plans. The Council investigated and found that the development varied from the plans. The developer has now submitted an application for a non material amendment.
13. The Council has acknowledged that it delayed in responding to Mr X's complaints and did not signpost him its complaints procedure which caused Mr X inconvenience in pursuing his complaint. It has offered to remedy this by making a payment of £250 to Mr X.

## Analysis

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14. I understand that Mr X feels strongly that the Council should not have determined the planning application as the wrong ownership certificate may have been served because the eaves and guttering will encroach onto his property. But the Council was not at fault in validating the application. It was accompanied by an ownership certificate so it was entitled to validate it. The Council could not have determined whether or not the applicant had served the correct land ownership certificate. This would have caused the Council to decide who owned the land and it is not competent to do this. This

can only be decided by the courts. In any event it would not have made a difference as the purpose of the certificate is to alert land owners that development may be built on their land. Development can be built on land not owned by the developer. It is not the responsibility of the Council to check if the landowner has consented, this is a matter between the landowner and developer.

15. The Council can only take into account material planning considerations into account when deciding a planning application. Land ownership, boundaries, covenants and access for construction and maintenance are not material planning considerations. These are civil matters between the developer and adjoining landowners. So the Council could not take account of Mr X's concerns about access and the eaves and guttering encroaching on his property when determining the application.
16. The Council was not at fault in not notifying Mr X of the outcome of the planning application. There is no obligation for it to notify objectors of the outcome.
17. The Council has investigated Mr X's report that the development is not being built in accordance with the approved plans. I understand that the developer has now submitted an application for a non material amendment. Mr X disputes that the amendment is non material. I cannot investigate this matter any further at the present time as it is ongoing. It is for the Council to decide if the application is a non material amendment and to make a decision on the application. The Ombudsman cannot interfere in this process. Mr X can make a further complaint to the Ombudsman once the Council has decided the application. But before we can consider a new complaint, Mr X will need to make a complaint to the Council to give it the opportunity to investigate the matter.
18. The Council has acknowledged that its handling of Mr X's complaint was poor. As a result he was caused inconvenience. The Council's proposed remedy of £250 to acknowledge the inconvenience caused to Mr X is fair and proportionate. It is also at the upper end of what the Ombudsman normally recommends for inconvenience.

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## Agreed action

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19. That the Council makes a payment of £250 to Mr X to acknowledge the inconvenience he was caused by the faults in how it dealt with his complaint.

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## Final decision

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20. There was no fault in how the Council determined Mr X's neighbour's planning application. The Council was at fault in how it dealt with Mr X's complaint. Its proposed remedy of £250 to

acknowledge the inconvenience caused by its poor complaint handling is fair and proportionate. I have therefore completed my investigation.

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## Investigator's decision on behalf of the Ombudsman

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