



Northern Ireland

**Public Services**

Ombudsman

# **Investigation of a complaint against Belfast City Council**

**Report Reference: 202002194**

The Northern Ireland Public Services Ombudsman

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## **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.

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**Case Reference:** 202002194

**Listed Authority:** Belfast City Council

## **SUMMARY**

This complaint was about the actions of Belfast City Council (the Council). The complainant raised concerns about the Council's decision not to take enforcement action against a structure erected in his neighbour's garden. This investigation considered the process the Council followed leading to its decision.

The investigation identified maladministration regarding the Council's failure to provide full and accurate reasons for its decision not to take enforcement action. I upheld this element of the complaint. It established this failure led to the complainant to sustain the injustice of uncertainty and frustration. While the investigation identified maladministration, I am satisfied the Council would not have reached a different decision had this failure not occurred. Therefore, the investigation did not identify any grounds on which it could question the merits of the Council's discretionary decision not to take enforcement action.

I recommended that the Council apologise to the complainant. I also recommended it delivers training to relevant staff to prevent the failures recurring. The Council accepted the findings and recommendations.

## THE COMPLAINT

1. I received a complaint about the actions of Belfast City Council's (the Council) Planning Service (the Planning Service). The complaint related to the Council's decision not to take enforcement action for a structure the complainant's neighbour erected (application LA04/2021/0130/CA) (the application).

### Background

2. On 25 March 2021, the complainant raised his concerns about the structure with the Council's Planning Service. He described the structure as a '*seven-foot-tall garage / fence*' built on his neighbour's driveway. The Council opened an enforcement case.
3. On 19 April 2021, the Council visited the site and established the construction would have required planning permission. However, in its report on 19 July 2021, the Council concluded it was not expedient to proceed with enforcement action in this case. This was due to '*the position of the extension, limited impact on the character of the area, no unacceptable impact on neighbouring property, and no determinantal impact on the residential property itself*'. The Council closed its case on 26 July 2021.
4. The complainant appealed this decision, citing an additional concern that the position of the structure was too close to the property's boiler flue, and thus was a health and safety issue. The Council referred the issue of the flue to Building Control.
5. On 4 October 2021, Building Control carried out a site inspection. It found that the position of the boiler flue did not meet the minimum 300mm separation distance. However, it did not deem it a contravention of the Building Regulations NI 2012.
6. The Council considered the complainant's concerns under its complaints process. It issued its final response to the complaint on 24 February 2022. The Council did not uphold the complaint.

## **Issue of Complaint**

7. I accepted the following issue of complaint for investigation:

**Whether Belfast City Council acted in accordance with relevant policies, procedures and guidance when it decided not to take enforcement action for case LA04/2021/0130/CA.**

## **INVESTIGATION METHODOLOGY**

6. In order to investigate this complaint, the Investigating Officer obtained from the Council all relevant documentation together with its comments on the issue the complainant raised. This documentation included information relating to the Council's complaints process.

## **Relevant Legislation, Standards and Guidance**

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

The general standards are the Ombudsman's Principles:<sup>1</sup>

- The Principles of Good Administration.

8. The specific legislation, 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 legislation, standards and guidance relevant to this complaint are:

- The Planning Act (Northern Ireland) 2011 (the 2011 Act);
- The Planning (General Permitted Development) Order (Northern Ireland) 2015 (the GPD Order);
- The Planning (General Permitted Development) (Amendment) Order (Northern Ireland) 2016 (the GPD Amendment Order);

<sup>1</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- Belfast City Council, Planning Service Enforcement Customer Charter, 2016 (Enforcement Charter);
- The Department for Infrastructure's (DFI) Development Management Practice Note 16 – The Determination of Planning Applications, 2015 (Practice Note 16);
- The Department of Finance and Personnel, Building Regulations (NI) Guidance, October 2012 (Building Regulations);
- The Department of Finance and Personnel, Building Regulations (NI) Guidance, Technical Booklet L: Combustion appliances and fuel storage systems, October 2012 (Technical Booklet L);
- Department of the Environment, Addendum to Planning Policy Statement 7 Safeguarding the Character of Established Residential Areas, August 2010 (Planning Policy Statement 7);
- The Department for Infrastructure's (DFI) Development Management Practice Note 18 – The Consultation Process and Duty to Respond, Version 2, 2016 (Practice Note 18); and
- The Northern Ireland Public Services Ombudsman (NIPSO), the NI Audit Office and Information Commissioner's Office (ICO) published standard: Records Matter, a View from Regulatory and Oversight Bodies on the Importance of Good Record Keeping, January 2020 (joint Published Standard).

9. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the Council. It is not within my powers to question the merits of a discretionary decision unless my investigation identifies maladministration in the process of the Council making that decision.
10. I did not include all information obtained during the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.

11. 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.

## **THE INVESTIGATION**

**Whether Belfast City Council acted in accordance with relevant policies, procedures and guidance when it decided not to take enforcement action for case LA04/2021/0130/CA.**

### **Detail of Complaint**

12. This complaint related to the process the Council followed that led to its decision not to take enforcement action against a structure the complainant's neighbour erected, which breached planning control. The complainant was also concerned that the Council did not deem the position of the structure's boiler flue as a contravention of the Building Regulations.

### **Evidence Considered**

13. I considered the following legislation, policies, and guidance:
  - The 2011 Act;
  - The GPD Order;
  - The GPD Amendment Order;
  - Enforcement Charter;
  - Practice Note 16;
  - Technical Booklet L;
  - Planning Policy Statement 7; and
  - Practice Note 18.

### **The Council's response to investigation enquiries**

14. The Council stated that following a site visit on 19 April 2021, Planning Enforcement decided the structure would have required planning permission and as such, was a breach of planning control. However, the structure did not cause an *'unacceptable level of harm to the environment or public amenity'*,



and as such, it was not expedient to pursue. The Council closed its case on 26 July 2021.

15. The Council referred to the complainant's view that the structure was not '*minor works*' and therefore, his neighbour should have obtained planning permission. The Council stated the structure was minor works and cited that under planning law, persons can carry out certain relatively minor works without the need to apply for planning permission. These are set out in the GPD Order, specifically in Part 3 of the Schedule, which deals with minor operations (Class A).
16. The Council stated: Class A, Part 1 of the Schedule (GPD Order) sets out permitted development rights for extensions and alterations to a dwelling house. This includes garage extensions attached to the house. The structure fell within the dimensions permitted under Class A, thus would be considered as minor works.
17. Regarding the materials used, the Council stated: '*the materials used in the construction of the garage are not similar to those used for the main house*'. Therefore, the structure fell outside of the condition at paragraph A.3 a) of the GPD Order.
18. Despite this, the Council stated, the '*materials used in the construction of the attached garage are not objectionable and do not give rise to harm the character and appearance of the area*'.
19. The Council said, '*to clarify, the structure does not constitute permitted development only on the basis of the materials used, but the conclusion was that the materials used were not objectionable*'. For this reason, the Council decided it was not expedient to take enforcement action under planning legislation.
20. In relation to the boiler flue, the Council stated it did not pursue the concern and prosecute as;  
*'A site visit to inspect the boiler flue position ascertained that whilst it did not strictly meet the minimum 300mm separation distance given in the guidance*

*document Technical Booklet L 2012, it would not be deemed as a contravention of the Building Regulations NI 2012'. This is because the site visit and consideration of the flue did not raise concern about a risk to health or life. The flue points upwards, away from the roof of the structure. Therefore, the 'products of combustion are dispersed safely, and the heat is dissipated upwards'.*

21. The Council said it followed its own policies and procedures, as well as legislation and regulations, when deciding on its course of action. It concluded that *'it would not be expedient or in the public interest to take enforcement action to require the structure obtains planning permission'* and that was considered a *'reasonable conclusion'*.

### **The Complainant's response to the draft report**

22. The complainant stated it is *'beyond his understanding'* how a neighbour can erect a large steel frame structure without planning permission. He restated his view that there is a *'considerable risk to life'* due to the proximity of roof to flue exhaust.

### **Analysis and Findings**

#### *Consideration of the structure*

23. The complainant said the Council did not give sufficient consideration to the structure his neighbour erected. He believed the structure did not constitute *'minor works'* but was a *'major structure and eyesore'*.
24. Article 3, Part 1 of the GPD Order deals with developments within the curtilage of a dwelling/house. The structure in question fails under A.3 (a) of the GPD Order, as the materials used are not of similar appearance to those used in the construction of the exterior of the existing house. Therefore, the structure breached planning control.
25. The Guiding Principles set out in the Council's Enforcement Charter, refer to enforcement action. Section 3.1 of the Charter states the Council will take enforcement action against *'any unauthorised development which unacceptably*

*harms public amenity, public safety or the existing use of land and buildings which should be protected in the public interest*'.

26. I note the Council took the view that *'the materials used in the construction of the attached garage were not objectionable and did not give rise to harm the character and appearance of the area'*. Therefore, it did not consider it expedient to pursue enforcement action.
27. This was communicated to the complainant on 26 July 2021. The Council stated in their letter *'the matter referred to, only represents a slight variation... of what would have been permitted'*. In a further letter to the complainant dated 17 August 2021, the Council stated, *'the structure did not cause an unacceptable level of harm'* and *'giving priority to those breaches where... the greatest harm is being caused.'*
28. I consider this a discretionary decision that the Council took in accordance with the Enforcement Charter. The 2011 Act permits the Council to make a discretionary decision not to pursue enforcement action if not expedient to do so. This investigation did not seek to challenge the Council's discretionary decision. However, it did consider if the Council acted in accordance with legislation, guidance, and relevant standards in the process of making its decision.
29. In doing so, I considered the Council's correspondence with the complainant in response to his concerns. Section 3 of the Enforcement Charter outlines the Council's commitment to ensure the *'credibility and integrity of the planning system is not undermined'*. This includes transparency about how the Council operates. However, having reviewed the Council's records, I do not consider it provided the complainant with a full and clear explanation for its decision. The Council, in its correspondence with the complainant, did not explain in what way the materials used were *'not objectionable'* and were acceptable in this case. In addition to this, the Council did not fully explain its rationale for why the structure did not cause an *'unacceptable level of harm'*. I consider that providing this explanation would have demonstrated the credibility and integrity of the Council's decision.

30. I accept that the Council's decision was a discretionary one. However, records such as Enforcement reports or contact records with clients should be maintained in such a way that allows others to clearly follow the decision-making process.
31. The first Principle of Good Administration requires bodies to act in accordance with their own procedural guidance. The third Principle of Good Administration requires public bodies to provide honest, evidence-based explanations, giving reasons for its decisions, and keeping full and accurate records. For the reasons outlined, I consider the Council failed to meet these principles. I am satisfied this constitutes maladministration and I uphold this element of the complaint. I will consider the injustice the complainant sustained later in this report.

#### *Consideration of the boiler flue*

32. The Council provided notes and photographs taken following its site visit on 4 October 2021. The notes document the position of the boiler and the materials used to build the lean-to structure. I note the position of the flue does not meet the minimum 300mm separation distance as the Technical L Booklet requires. However, it is directed at an angle pointing away from the structure. In addition to this, the notes evidence that the officer sought a second opinion from the lead surveyor on the proximity between the roof and the flue. I note they both agreed not to pursue the matter further.
33. The Council communicated its decision to the complainant on 5 October 2021. The email outlined that although the boiler flue position may not '*strictly*' meet the minimum separation distance, it did not deem it a contravention of the Building Regulations NI 2012. However, I do not consider the Council provided to the complainant an explanation of why it considered the proximity of the structure to the flue safe and not a '*threat to life*'.
34. I considered internal emails between the Principal Building Control Surveyor and Building Control Manager. The emails document that the inspection did not identify any potential hazards. They also document further reasons why

they did not identify any health and safety concerns. They discuss how the flue does not get hot to the touch on the sides as they are '*double skinned*' and the outlet itself points away from the structure which is evidenced by lack of any heat damage. In addition to this, they discuss that if the flue transmitted heat to the structure, it would be visible. I am disappointed that the Council did not communicate these reasons to the complainant.

35. I again accept that the Council's decision was a discretionary one made in accordance with the Regulations (Schedule 2, part 8). However, while the complainant was informed of the decision, it did not address his health and safety concerns. The third Principle of Good Administration requires public bodies to provide evidence-based explanations, giving reasons for its decisions. It is clear the Council recorded its considerations regarding potential risks in its internal correspondence. However, it did not relay these to the complainant. I consider that doing so may have reassured the complainant that the Council did not consider it a health and safety concern. For the reasons outlined, I am satisfied this constitutes maladministration and I uphold this element of the complaint.

#### *Summary*

36. While I have identified maladministration, I have not identified any grounds on which I could question the merits of the Council's discretionary decision not to take enforcement action. I acknowledge the complainant's concerns regarding the size of the structure and potential risks from the flue. However, I am satisfied the Council would not have reached a different decision had these failures in administration not occurred. Nevertheless, I consider the complainant sustained an injustice, not as a result of the decision regarding enforcement action, but because of the doubt it created about the process. I am satisfied that in this case, the complainant sustained the injustice of uncertainty and frustration.

## **CONCLUSION**

37. The complainant raised concerns about the Council's decision not to take enforcement action against a lean-to structure erected in his neighbour's

driveway. The investigation considered the process the Council followed leading to its decision.

38. The investigation identified the Council did not explain its rationale for its decision not to pursue enforcement action or its reasons why it did not consider the position of the boiler flue, in relation to the structure, a health and safety concern. I am satisfied this constitutes maladministration and I uphold the complaint. I consider this led to the complainant sustaining the injustice of uncertainty and frustration.

### **Recommendations**

39. I recommend that within **one month** of the date of this report, the Council provides the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2019), for the injustice caused as a result of the maladministration identified.
40. The Council stated it is in the process of completing a review of the Planning Enforcement Charter and will deliver training to relevant staff following its implementation. This training will include the importance of recording and retaining full, clear, and accurate records for all cases. I welcome this learning already identified. I further recommend that in delivering this training, the Council considers the publication 'Records Matter' (a joint publication by the Public Services Ombudsman, the NI Audit Office and the Information Commissioner's Office, January 2020).
41. The Council should provide evidence it delivered this training within **six months** of the date of this report.

**MARGARET KELLY**  
Ombudsman

**13 November 2023**

## 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.