

**Complaint reference:**  
14 015 424

**Complaint against:**  
St Edmundsbury Borough Council

## **The Ombudsman's final decision**

Summary: Mr A complains the Council inappropriately advised him to apply for planning permission before seeking the lifting of a restrictive covenant on his land. There was some limited fault by the Council and in recognition of this it has agreed to my proposal that it pay Mr A £100 to settle the complaint.

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## **The complaint**

1. Mr A complains the Council inappropriately advised him to apply for planning permission before seeking the lifting of a restrictive covenant on his land. As Mr A will not pay the sum the Council is seeking to lift the covenant, this was an abortive cost. The Council also failed to explain what its charge was for, so he unnecessarily produced his own deed of variation.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints of injustice caused by maladministration or service failure. I have used the word fault to refer to these. The Ombudsman 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)*)
3. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

## **How I considered this complaint**

4. In considering the complaint I spoke to Mr A and reviewed the information he and the Council provided. Both Mr A and the Council were given the opportunity to comment on my draft decision.

## **What I found**

5. In 2009 Mr A bought some land next to his garden from the Council. When the land was sold the sale was subject to a restrictive covenant which prohibited the erection of a shed on the land.
6. Planning permission was obtained to change the land's use to garden land. This permission was subject to a planning condition that no building or structure be erected on the land without further planning permission. This meant normal permitted development rights to erect a shed in the garden of a house without planning permission were removed.

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7. In September 2013 Mr A decided he wanted to build a shed on the land. He submitted a planning application which sought to vary the condition attached to the change of use permission removing permitted development rights and preventing anything being built on the land without permission.
  8. Having submitted his application, Mr A met with Officer X, a senior planning officer, who informed him that the planning condition did not say nobody could have an outbuilding on the land but that it enabled the Council to keep control of what was built on it by requiring a formal planning application. Officer X advised Mr A that an application to vary the condition would fail as the Council would not want to lose the control it had. However, if Mr A submitted an application for a specific structure, ie the shed, the Council might approve it because it would be assessed on its own merits.
  9. As a result of this advice Mr A withdrew his initial application and submitted one which applied for permission for the shed in its own right, and to retain fencing he had already erected. Permission was granted in January 2014.
  10. Meanwhile, in November 2013, the Council wrote to Mr A about the restrictive covenant on the land which prohibited the erection of a shed.
  11. Having obtained planning permission, Mr A wrote to the Council about varying the covenant and in March the Council confirmed it would be agreeable to varying it. It confirmed “the Council’s costs for this matter will be £2,000 in total”.
  12. In his attempts to avoid what he understood to be the Council’s administrative costs of £2,000 in preparing the necessary deed of variation, Mr A drafted one himself and sent it to the Council.
  13. In June the Council told Mr A the deed was not acceptable and clarified that the £2,000 was consideration to be paid to the Council because of the increase in value of the land without the restrictive covenant imposed.
  14. Mr A complained to the Council about its handling of matters, believing he had been misled into applying for planning permission before the restrictive covenant had been removed and that it had not been properly explained to him what the cost represented. Mr A says he would not have applied for planning permission for the shed and paid the application fee had he known it would cost him £2,000 to remove the covenant.
  15. The Council considered his complaint under its own complaints procedure. It did not uphold his complaint or accept he had been misled regarding the fees to be paid to remove the covenant. However, it did acknowledge that the £2,000 sum had been described differently throughout the Council’s correspondence and that a detailed explanation about how the sum had been reached should have been given to him at the outset instead of leaving him to actively seek out an explanation.

### **Analysis**

16. I understand the confusion that Mr A, as a lay person, had with what was required in order to get to his shed erected and how it was not clear to him initially that the grant of planning permission was separate from, and did not override, the restrictive covenant on the land.
17. In Mr A’s August 2014 letter of complaint to the Council he refers to the application form he submitted in 2013 as being one to remove the restrictive covenant when in fact it was a planning application to vary a planning condition. Mr A followed

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Officer X's advice about submitting a planning application for the shed itself. While Mr A may have misunderstood that this was all he needed to do, the Officer concerned has explained he would not have given Mr A any advice about the removal of a covenant because this is a private matter and not a planning matter. There are no notes of the conversation Officer X had with Mr A but the officer has recalled the case and described what took place.

18. Given the original application Mr A submitted in 2013 was a planning application, and Officer X's recollection of their meeting, I cannot conclude there was fault here. Mr A was correctly told about how to apply for planning permission and the issue of the restrictive covenant was properly raised by the Council's letter in November 2013.
19. There was, however, some fault by the Council in the way it conveyed information about the cost of removing the restrictive covenant to Mr A. It variously described the £2,000 sum as a cost, a payment and a consideration and it was not until its consideration of his complaint at the final stage of its complaints procedure that a detailed explanation of how the figure of £2,000 had been reached was given to Mr A.
20. Mr A has confirmed he has not suffered any actual loss in pursuing his wish to erect a shed other than the cost of the planning application. He says he would not have submitted this had he known it would cost £2,000 to remove the covenant. However, a planning application was required to retain fencing he had erected at his property so this cost would have always existed.
21. Mr A seeks the removal of the restrictive covenant for nil consideration as compensation for the Council's fault in dealing with matters. While this is not a remedy I propose because it is not warranted by the fault or injustice caused to him I do recognise the time and trouble Mr A has expended in pursuing matters

### **Agreed action**

22. To settle the complaint I proposed the Council pay Mr A £100 in recognition of the fault identified above. The Council has agreed to make this payment.

### **Final decision**

23. There has been fault by the Council which will be adequately remedied by the payment of £100.

### **Investigator's decision on behalf of the Ombudsman**