

## Redress, Or What To Do If The Planning System Fails You!



### Introduction

At its best, the planning system remains a good example of local democracy in practice. The community as a whole will benefit.

However, there are instances when things go, or appear to go, wrong. This results in the belief that the planning system isn't fair or that decisions which may affect you have not been taken properly.

Yet when this happens, there may still be remedies which help you to try and put things right. Obtaining planning permission does not automatically mean that the development can proceed. There may be other circumstances, which can prevent the permission from being implemented.

### WHEN THINGS GO WRONG

#### Code of Conduct

Members of both district and parish councils must abide by their own local Code of Conduct. This is based on a model code approved by parliament.

The Standards Board investigates complaints about misconduct of councillors. This is an independent organisation set up in 2000. The Board will look into written complaints about the behaviour of councillors. Complaints about

planning procedures are usually covered by the ombudsman (see below).

Examples of behaviour that may breach a code of conduct include:

- o lobbying for or against a proposal may amount to a personal interest which could prejudice your role as a public representative.
- o where a councillor is a member of both a Parish and District Council. Having formed a view at a Parish Council meeting, he must keep an open mind while considering all of the issues raised at a District Council planning meeting.

It should be noted that any complaints about a code of conduct would not lead to a review of the merits of a planning decision made by the District Council.

#### The Local Government Ombudsman

If you are unhappy about the District Council's handling of a planning matter, a complaint can be made to the local government ombudsman. This procedure applies equally to the actions of officers and councillors.

Before the ombudsman will investigate your complaint, you must give the Council a chance to consider your grievance. If this cannot be dealt with satisfactorily by discussing it with the relevant officer, you will be requested to submit a formal complaint. This should be done on the Council's standard form. These are kept at the main Reception desk.

The Council will provide you with a full written reply to your complaint. If you are still unhappy with the service you have received, the matter can then be referred to the ombudsman. This must be done within 12 months.

The Ombudsman will consider if the complaint is justified. If it is, he will then investigate it by scrutinising the Council's files and talking to the individuals involved. He can, however, only investigate how a

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decision was taken. He has no power to quash or reverse that decision (see section on judicial review below). If the Council has acted improperly, it would be guilty of “maladministration”. If this is proven and he has suffered injustice, the complainant can recommend a solution. The Council may also be asked to pay compensation as well as the complainant's costs for their time and trouble.

Examples of maladministration include:

- o Unreasonable delay.
- o Giving incorrect or misleading information.
- o Not keeping to well-established procedures (e.g. not consulting on a planning application and this leads to possible objections not being taken into account).
- o Failure by a councillor to declare a clear and substantial interest in a planning matter at a committee meeting. This might be where they have a financial interest in a site or if they live next to it. Friendship with an applicant or loyalty to a club might also amount to an interest (in such cases a complaint against the code of conduct could be made).

The ombudsman will not investigate matters where an alternative remedy is available (e.g. right of appeal or by going to court).

#### **Judicial Review**

There may be occasions when you feel that a decision on a planning application is not a fair one. Perhaps the Council has exceeded its powers, misinterpreted the law or has not followed the correct procedures.

The decision can be challenged by applying to the High Court for “judicial review”. Any person aggrieved by the decision can make a High Court challenge, but they must have a sufficient

interest in the matter concerned. The procedure, however, has its drawbacks. An application must be made promptly, and in any event within three months of the decision.

A successful challenge cannot reverse the decision of the local authority. Instead, the decision is quashed and the matter has to be redetermined. This means that the decision may still be the same next time around.

Thus a victory in the High Court may win a point of principle, but may still not alter the eventual decision. High Court hearings are also potentially very costly – often several thousand pounds. You must pay the other parties costs if you lose.

Any such challenge should therefore be given very careful consideration. The advice of a solicitor is therefore essential before proceeding with judicial review.

## **OTHER REMEDIES**

### **Injunctions**

It may sometimes be possible to prevent or delay a course of action pending a legal dispute. An application can be made to the courts for an injunction, which will suspend any action while the dispute is resolved.

Examples of this may be where a developer has obtained planning permission, but there is a dispute on rights of way or ownership, or a claim to a right to light (see below).

An injunction cannot be used to force a party to do something positive. It will only be agreed at the discretion of the court. As with judicial review, you should seek legal advice beforehand.

### **Covenants**

The existence of a covenant does not prevent planning permission from being granted. Nonetheless, it is still possible to enforce a covenant, which restricts certain actions from being taken.

Typical examples are covenants that prevent land from being built upon, or prevent a trade or business use on the land.

An application to enforce a covenant is made to the Lands Tribunal. The applicant must have an interest in the matter and be able to show that the restriction is still necessary.

In the same way, it is possible for a developer to apply to have a restrictive covenant removed.

### High Hedges

Part 8 of the Anti-social Behaviour Act 2003 gives local authorities powers to deal with complaints about high hedges. It came into operation in England on 1 June 2005.

Provided they have tried and exhausted all other avenues for resolving their hedge dispute, people will be able to take their complaint about a neighbour's evergreen hedge to the District Council. The role of the local authority is not to mediate or negotiate between the complainant and the hedge owner but to adjudicate on whether - in the words of the Act - the hedge is adversely affecting the complainant's reasonable enjoyment of their property.

In doing so, the authority must take account of all relevant factors and must strike a balance between the competing interests of the complainant and hedge owner, as well as the interests of the wider community. If the Council considers the circumstances justify it, it will issue a formal notice to the hedge owner which will set out what they must do to the hedge to remedy the problem, and when by. This is known as a "Remedial Notice".

Both the owner and complainant may appeal against the Council's decision. This must be done within 28 days starting from the date of the remedial notice.

Further advice can be found on the Council's website at <http://www.scambs.gov.uk/Environment/Planning/DevelopmentPlanning/Enforcement/hedges.htm>

### Rights to Light

Objections to planning applications are sometimes made on the grounds there is a right to light or the existence of ancient lights<sup>1</sup>. These do not prevent planning permission from being granted, but may still prevent the development being carried out.

Such a claim must be established before the development is started. It is made by way of an application to the Lands Tribunal, which will issue the necessary certificate if the claim is confirmed. The Council will register the right to light as a local land charge.

It is possible not only for a person to claim rights of light, but also for his neighbour to prevent that person from claiming such rights in the future.

The advice of a solicitor or chartered surveyor is recommended.

### Rights of Way

A proposal may obstruct a public path or other right of way. This does not give the developer the right to interfere with, or move, the path.

It cannot be legally diverted or closed unless an order has been made to do so. This involves advertising the proposed changes and may result in an inquiry if objections are received. Such matters are dealt with the Cambridgeshire County Council.

### The Party Wall Act

The Act<sup>2</sup> prevents or resolves disputes over party walls, boundary walls and excavations near neighbouring buildings.

#### References

<sup>1</sup> Section 3, Rights of Light Act 1959

<sup>2</sup> The Party Wall etc. Act 1996

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Anyone proposing to carry out work affecting a boundary, must give adjoining owners notice of their intentions. Adjoining owners can disagree with what is proposed, in which case there is a procedure to resolve the dispute, which is deemed to have occurred.

A neighbour cannot prevent someone from exercising his or her rights under the Act. What they can do is to influence how and when the work is done, ensure unnecessary inconvenience, and seek compensation for any damage to their property.

#### **Other Legislation**

Objections to planning applications may include matters, which the Council is unable to take into account (see Advice Note 5 for examples). It may be that these can be dealt with under other legislation.

Examples of this and the Council department concerned include:

- o noise arising from building works - Environmental Health
- o fire risks, structural stability of buildings - Building Regulations
- o licensing of caravan sites, public entertainment licences - Environmental Health
- o obstruction of the highway - County Council Highways department (as well as the Police)

In all cases, you should contact the relevant Council department.

#### **GETTING HELP**

Officers in the Council's planning department are always willing to give help and advice on planning matters.

The Cambridgeshire Association of Local Councils (CALC) provides help for its member Councils on all aspects of local government.

The East of England Planning Aid Service provides free and independent planning advice to those unable to pay consultant's fees. Its volunteers will provide help for individuals and groups and possibly for parish councils depending on the nature and extent of the help required. The aim is to promote a better understanding or participation in the planning process.

Where non-planning issues are raised, you will need to seek qualified help from an appropriate body. A list of useful contacts and publications is set out in Advice Notes 11 and 12.

*Please Note: This advice note is intended as a general guide and should not be relied upon, or taken to be a full interpretation of the law.*