

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint about
London Borough of Haringey
(reference number: 20 006 289)**

10 January 2022

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

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|------------|------------------------|
| Mr X | The complainant |
| Property B | The neighbouring house |

Report summary

Corporate services – Land

Mr X complained about the Council's handling of the possible purchase of his home related to the development of a neighbouring site.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused the Council should:

- apologise to Mr X for the faults found and the injustice caused to him and pay him £1,000 for the stress and uncertainty; and
- reconsider the proposals for the development of the site. This should be considered by full Council or Cabinet and the report should provide an accurate description of the history of the matter and should refer to this report. It should consider all the possible options for the site including the inclusion of the terrace of houses in the scheme. If the decision is to proceed with the development including the terrace of houses the Council should provide a remedy to the tenants who were wrongly assured that they would be able to stay in the properties. If a remedy cannot be agreed they can make a complaint to us.

The complaint

1. We refer to the complainant as Mr X. He complained about the Council's handling of the possible purchase of his home related to the development of a neighbouring site. He said that as a result of the Council's errors his family lived with uncertainty for six years. The uncertainty and changes affected planning for their jobs and future and caused considerable stress.

What we have investigated

2. We have investigated the Council's actions from early 2018 but have referred to earlier events for background.

Legal and administrative background

The Ombudsman's role

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

How we considered this complaint

4. We produced this report after speaking to Mr X, considering all the information he and the Council provided and interviewing Councillor Ejiofor and officers of the Council.
5. We gave Mr X and the Council a confidential draft of this report and invited them to comment. The comments received were taken into account before the report was finalised.
6. We have decided to name Councillor Ejiofor. This is because we consider it is in the public interest to do so.

What we found

Summary of the key events

7. Mr X and his partner bought their house in 2013 for around £500,000. It is a three-bedroom property in one of two terraces of similar properties. The neighbouring house, which we will refer to as property B, was also privately owned. The rest of the houses were owned by the Council with tenants in occupation.
8. The Council had plans to develop adjacent land and to do so intended to demolish the two terraces. The first contact with Mr X about the plans was in 2014. Over the next four years there was contact between Mr X and the Council about the plans. The proposals changed over the years but that is not relevant to this complaint.

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9. In July 2017 the Council adopted the site allocations development planning document. This designated the Council owned site, including the row of houses where Mr X lives, for housing development.
 10. There was contact between the Council and Mr X and he instructed a surveyor to value his house and to look at what the Council's obligations to him might be.
 11. In February 2018 Mr X chased the Council for progress. He had a holding reply from an officer. In April he contacted the Council again asking what was happening but did not receive a reply. At the same time the owner of property B told Mr X that the Council was not proceeding with the purchase of their properties.
 12. In July the Council changed how it was to proceed with the development of the site. The original aim had been to do so with a developer, but it then moved to a plan of direct Council house delivery on the site.
 13. In August 2018 Mr X entered into an arrangement, referred to as an option agreement, with a developer. This provided the developer with the right to purchase Mr X's property at any point over the next two years for £1.75 million. Immediately after Mr X had entered into that agreement the Council wrote to him saying it still wanted to proceed with the purchase of his property.
 14. In September 2018 the Council's Cabinet formally agreed to the acquisition of both of the properties. Figures for the possible purchase price of the properties was agreed.
 15. There was then correspondence between Mr X and the Council about what the options agreement meant for the possible purchase by the Council. The next significant event was in June 2019 when the Council bought property B for £2.15 million.
 16. In October 2019 Mr X met with Council officers. The purchase price proposed was lower than had previously been discussed.
 17. In January 2020 there was contact between Mr X and Council officers about a further meeting. In early February Mr X spoke with then then leader of the Council, Councillor Ejiofor, and it was agreed the Council would meet the costs of Mr X's legal representative attending the meeting. Officers wanted to urgently arrange a meeting with him and his legal representative. The Council said this was to consider the options for outright purchase of Mr X's home or a possible swap with other Council properties.
 18. Then, in early March, before the meeting had taken place, there was a meeting between Councillor Ejiofor, various political representatives, and some of the council tenants of the other properties. Following the meeting Councillor Ejiofor decided not to proceed with the development of their homes.
 19. The Council told Mr X in June it was not proceeding with the scheme in the form that required the purchase of his property.
 20. In November the Housing and Regeneration Scrutiny Panel considered the process the Council had followed in proposing to include the terraces of houses in the development. The report set out the history. It said the value of property B was based on the view that the acquisition of that and Mr X's property would unlock the whole site.

Analysis

Communication

21. When an authority is looking to carry out major redevelopment that will often mean a number of properties will potentially be affected. Once the scheme has progressed there are compulsory purchase powers the Council can use to acquire land needed for the scheme. But before that stage is reached it can be the case that the proposals will be in the public domain and could affect the value of the potentially affected properties. This is just an inevitable part of the process and doesn't mean there has been fault that has caused injustice to someone so affected.
22. However, we can consider whether the Council has acted properly through the process. It should be even-handed in its dealings with people, its communications with people should be clear and transparent and it should follow its own constitution in how decisions are made.
23. The progression of the proposals for the land took many years but the significant period for this complaint were the events of July 2017 onwards. At that point the Council formally adopted the Local Plan which included the site allocations planning document. This identified the suitability of the whole site for development. That was in the public domain. It seems likely a developer recognised Mr X's house and the neighbouring property could be worth far more than market value because they would be needed if the Council was to develop the whole site.
24. In the first half of 2018 Mr X had asked the Council for an update, but the Council failed to respond. He had been contacted by the developer so when he had not heard from the Council, he entered into the option agreement. It is clear, that at this time, the Council must have been in negotiations with the owner of property B. The Council has failed to provide any information about that contact despite our repeated requests. But the Council had arranged a valuation of property B in early August so there must have been contact before then with the owner, however there was no contact with Mr X. Had the Council been in touch with him, even at this stage, he would have been able to make an informed decision about whether he should enter into the option agreement. All the information we have seen shows the Council was not being even-handed in the approach it was taking with Mr X and the owner of property B.

March 2020 meeting

25. We consider the key event was the decision not to proceed with the scheme involving the terrace of houses. This decision was made by the then Leader, Councillor Ejiofor, in March 2020 and altered the whole basis of the Council's proposals for the land. Those plans had been in contemplation for many years, were formally recognised in the Local Plan from July 2017 and formed the basis of the Cabinet decision to acquire the properties in September 2018.
26. The Council's constitution describes how decisions should be made. The Executive is the part of the Council which is responsible for most day-to-day decisions. The Executive is the collective term for the Leader, individual Cabinet Members, the Cabinet or a Committee of the Cabinet.
27. The Cabinet will ordinarily carry out all of the local authority's executive functions that are not the responsibility of any other part of the local authority, whether by law or under the Constitution, unless the Leader decides to discharge them

personally or allocate them to an individual Cabinet Member or a Committee of the Cabinet. The Leader may do this at any time.

28. The Executive has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is not in line with the budget or policy framework, this must be referred to the Full Council as a whole to decide.
29. In commenting on the draft of this report the Council commented at length on the above paragraphs, their accuracy and relevance to this complaint. However, they are taken directly from the Council's own constitution, and we consider they provide a useful summary of how decisions should be made.
30. We interviewed the three officers who attended the March meeting with Councillor Ejiofor. Two of the officers interviewed said they did consider after the meeting whether the decision by Councillor Ejiofor was in accordance with the Council's policy. One of the officers spoke to the then head of planning. He said she confirmed that in terms of the development plan there was no requirement to develop the whole site and it was possible to bring forward part of the site for development. They therefore considered the decision was in accordance with policy and was one the Leader was able to make.
31. Councillor Ejiofor said when interviewed that he did not consider it was necessary to refer the decision to Cabinet or full Council as it did not involve any expenditure. He said that he was aware of the previous decision to acquire both of the properties and that one had already been purchased. But, he said, circumstances had changed. It had not been possible to purchase Mr X's property because of the option agreement. And the delay in bringing the scheme to completion meant the other residents had gained momentum in their opposition to having to leave their homes. He also considered the loss of the terrace of houses as part of the scheme would not have a significant impact on the number of units that would still be able to be developed on the site. He thought it was probably a reduction of about 6 or 7.
32. The decision by Councillor Ejiofor may have been, on a strict interpretation of the constitution, one he was entitled to make but we do not consider it was made with due regard to all the relevant facts. The basis for the Council's housing proposals for the site for three years had been that the whole site needed to be developed to maximise the number of properties and to meet the Council's stated aims for direct council house provision. It was particularly important to be able to develop this part of the site as there were fewer physical constraints in the area and the properties built there would be sold to generate income to finance the development.
33. The Council, in a meeting of the Cabinet, had decided to purchase the properties to enable the development to proceed in this way. That report did refer to the possibility of only purchasing one of the properties and that the scheme would still be viable on that basis. But without any of the terrace of houses area included, it was unlikely the scheme would be viable. It was on this basis that approval was given to buy both the properties. And by the time of Councillor Ejiofor's decision in March 2020 the Council had spent over £2 million on property B so had made a significant financial commitment to proceeding with the scheme on that basis.
34. Councillor Ejiofor suggested circumstances had changed. That may have been the case, although we are not persuaded there was a significant change, but, even if there were, then the changes being proposed should have been subject to

proper scrutiny and analysis of the options. We consider this was an ill-considered decision based largely on the wishes of the tenants and frustration with the delays in buying Mr X's house. There was no analysis at the time of what the loss of the terrace of houses meant for the viability of the scheme. This lack of adequate analysis and consideration of the options and consequences of the decision is fault.

35. We have considered carefully the Council's comments on the draft of this report. The thrust of its argument is that Councillor Ejiofor was entitled to make this decision because there had been no firm commitment to proceed with the development of the site including the terrace. This position omits the significant point that the Council had already committed a substantial amount of public money in buying the other property which only had that value to the Council as part of the larger scheme. This decision meant that expenditure had been for nothing. The basis for our finding is that there is no demonstration of proper evaluation and weighing up by Councillor Ejiofor. There was no briefing paper or discussion, the decision was entirely his, taken at the time of the meeting. It is illustrative of the lack of proper consideration that this was not in contemplation even a few weeks before when he had spoken to Mr X and a meeting was to be arranged with officers.

Report to the scrutiny committee

36. There is a further area of concern. In the report to the scrutiny committee in November 2020 it said the decision not to proceed with the inclusion of the row of terraced houses had been made in June 2019. The Council has not provided any evidence to show there was any consideration then. We therefore consider this reference to June 2019 is wrong. This meant that an inaccurate picture of events was presented to the scrutiny committee.

Conclusions

37. Based on the information we have seen, we consider the decision by the then Leader, Councillor Ejiofor, in March was flawed. Had he not made that decision, then the development is likely to have progressed as had always been intended including all of the terrace of properties. Although it is not possible to say with certainty whether the Council and Mr X would have reached agreement about the purchase of his house. The Council has continued to consider how to develop the site without the terrace of houses. More is now known about the site and how many units it might accommodate and plans are being progressed on that basis.
38. Although Councillor Ejiofor gave a commitment not to remove the tenants, we do not consider it is right the Council should be held to a flawed decision. We consider the Council should reconsider its plans for the site with all options open for consideration.
39. There was also fault in the communication with Mr X. At a key point in 2018 the Council failed to keep in touch with him. It was inevitably the case that a scheme of this size and complexity would take years to progress and that would cause uncertainty and worry for people in the properties likely to be affected. That is not as a result of fault. But the faults found here have increased the stress and uncertainty for Mr X.
40. The lack of even-handedness in the Council's approach has also increased Mr X's sense that he was not being treated fairly by the Council.

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41. There was further fault in the report to the scrutiny committee but that did not cause any injustice to Mr X.

Recommendations

42. The Council should:
- apologise to Mr X for the faults found and the injustice caused to him and pay him £1,000 for the stress and uncertainty; and
 - reconsider the proposals for the development of the site. This should be considered by full Council or Cabinet and the report should provide an accurate description of the history of the matter and should refer to this report. It should consider all the possible options for the site including the inclusion of the terrace of houses in the scheme. If the decision is to proceed with the development including the terrace of houses the Council should provide a remedy to the tenants who were wrongly assured that they would be able to stay in the properties. If a remedy cannot be agreed they can make a complaint to us.
43. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

44. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr X. The Council should take the action identified in paragraph 42 to remedy that injustice.