

Magri, Helen

From: Brian Miles [B.Miles@lgo.org.uk]
Sent: 17 September 2010 11:37
To:
Subject: RE: Complaint by Mr Edmunds 10 000 639

Dear ' ' – thank you for your e mail and the attachment. I will await any further record you can provide of the meetings referred to.

Brian Miles
Senior Investigator
02476 820034

From: @portsmouthcc.gov.uk
Sent: 17 September 2010 11:07
To:
Subject: RE: Complaint by Mr Edmunds 10 000 639

Dear Mr Miles

Please accept my apologies for the delay in responding.

With reference to points 1 and 2 it would appear that there were no formal minutes taken, however we are continuing to investigate if any of the officers attending took their own meeting notes. Unfortunately I will have to wait until the officers have returned from leave to confirm this.

Point 3. This was an informal discussion and no minutes were taken.

Point 4. Please find attached a copy of the report by the specialist planning lawyer.

Point 5. Portsmouth City Council does not have any further comments to make regarding the complainants letter dated 17 June 2010. The council's response of the 13 July 2010 was delayed whilst it considered the complainants amended statement and any further comments were included as appropriate.

Please accept my apologies for any inconvenience caused.

Regards

Corporate Complaints Investigative Link Officer

Portsmouth City Council
Civic Offices
Guildhall Square
Portsmouth
PO1 2AL

023 9283

[@portsmouthcc.gov.uk](mailto:portsmouthcc.gov.uk)
www.portsmouth.gov.uk

PLANNING COMMITTEE

2 West Street, Portsmouth, Hants. PO1 2JW

Report by: Head of Planning Services

Wards Affected St. Thomas

Key Decision: No

Budget & policy framework decision No

1. Summary

The report explains that

- The Council's enforcement action to secure provision of an obscured glazed screen to a roof terrace at the property has been substantially complied with
- Further action to secure outstanding details would not be expedient
- Information received by the Committee during its meeting in March appears to have been based on a misunderstanding, and was incorrect.

2. Purpose of the Report

This report

- informs members of the current position with regard to compliance with development control at the site
- explains why it would not be in the public interest to take action to prosecute for any earlier non-compliance.

3. Background

The Committee received a report on Application 09/01493/HOU at its meeting on 13th January 2010 referring to an application by Professor B.A. Woodiwiss for "Construction of single storey roof extension with new steel and glass balustrading around roof terrace (resubmission of 09/01248/FUL)". A related enforcement notice had not been fully complied with. Members requested that the Head of Planning instruct the Head of Legal Services to consider prosecution proceedings in respect of the apparently continuing breach of planning control.

4. Recommendations

It is recommended that:

It be noted that substantial compliance with the enforcement notice has been achieved and no further enforcement action is expedient in present circumstances. Prosecution could not be justified as being proportionate in the public interest.

5. Reasons for recommendations

An obscured glazed screen has now been erected on the roof terrace, although some of the details remain incomplete.

In an appeal relating to the development of the property, the resident of number 15 was identified in the Planning Inspector's decision as being most adversely affected. There have been no complaints by the resident living in that property, and no comment or complaint regarding the screen that has been erected.

In the opinion of your officers, to the extent that there would have been a justification for such a complaint before the most recent works to erect a screen were undertaken, the problem has been remedied by what has been done. In the circumstances, further and formal enforcement action is not expedient.

The "Code for Crown Prosecutors" (issued pursuant to the Police and Criminal Evidence Act 1984) requires those responsible for initiating prosecutions to be satisfied that proceedings are justified after considering not only whether evidence is sufficient to secure a conviction, but also whether the particular prosecution is in the public interest.

6. Options Considered and Rejected

1. Continuing enforcement action by way of prosecution.

This has been rejected because it could not be justified as being in the public interest to proceed. It would appear unduly harsh when the current owner has taken remedial steps immediately on becoming the owner of the property. It would also be a disproportionate use of proceedings because the resident objectively considered (by the Inspector) to benefit most from the erection of the screen has not complained.

2. Continuing enforcement action by further investigation

The new owner of the property has signalled his intention to comply with planning control and continuing investigation would be an unnecessary waste of resources.

3. Withdrawing the enforcement notice

It is clear from the history of this matter that retaining the notice is an effective and expedient measure to prevent harm to the amenity of neighbouring residents, and the enforcement notice should not be withdrawn. It is a proportionate and preventative measure and has no practical or detrimental effect on the owner's rights and interests in the property until or unless such an owner removes the screen again.

7. Legal Implications

To proceed with legal action by way of prosecution would require detailed further investigation and statement preparation. Such a deployment of resources would be wasteful in view of the substantial degree of compliance with the enforcement notice.

Local Government
OMBUDSMAN

11 September 2010

Mr D Williams
Chief Executive
Portsmouth City Council
DX 2244
Portsmouth

Our ref: 10 000 639/B2/BAM
Please quote our reference when contacting us and,
if using email, please put the reference number in the email subject header

**If telephoning contact: Brian Miles on 024 7682 0034
or if using email, send to: b.miles@lgo.org.uk**

Dear Mr Williams

The Local Government Ombudsman has received a complaint by Mr K Edmunds of 23 Broad Street, Portsmouth PO1 2JD. I enclose details of the complaint, which I am now investigating.

Here is a summary of the complaint as I understand it:

That the Council:

- a) failed to implement a decision and instruction of the Planning Committee on 13 January 2010 to pursue a prosecution for non-compliance with an enforcement notice served in relation to breaches of planning control at 2 West Street, Portsmouth;
- b) gave misleading information on the extent of the action taken to implement the decision and instruction of the Planning Committee on 13 January 2010;
- c) failed to make available in the public gallery at the Planning Committee meeting on 3 March 2010 the green supplementary sheet;
- d) failed to make available on the Council's web site or to members of the public prior to the Planning Committee meeting on 3 March 2010 an Annex on Light Loss calculations referred to in the Brief for the site as presented to the Committee;
- e) failed to explain why the designated planning case officer for the first two deferred committee meetings about the development was replaced by another case officer for the Planning Committee meeting on 3 March 2010;
- f) failed to explain why the replacement case officer stated to the Planning Committee meeting on 3 March 2010 that light calculations had been carried out on a first floor window of the complainant's house, when a document he received from the planning department on 26 February 2010, that he was told was the Annex to the Brief and had been cleared by a senior officer, showed that it was not;
- g) based the consideration of the matter by the Planning Committee on 3 March 2010 on an incorrect and misleading statement by a senior officer that a

The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB

T: 024 7682 0000
F: 024 7682 0001
DX:DX 702110 Coventry 6
W: www.lgo.org.uk
Advice Team: 0845 602 1983

Jerry White
Local Government Ombudsman
Neville Jones
Deputy Ombudsman

- decision on a previous complaint to the Ombudsman had related to 2 West Street when the complaint had been about development at 10 West Street; and
- h) gave inadequate consideration to the complainant's formal complaint about the above matters, failed to respond to the questions put and delayed unjustifiably in considering the complaint.

Please send me your comments on the complaint so that they reach me within 28 days of the date of this letter. In addition to your general comments, please would you provide the following information:

1. A chronology of the events leading up to the submission of the complaint.
2. Describe the action taken by the Council to investigate alleged breaches of planning control at 2 West Street, Portsmouth and to implement a decision and instruction of the Planning Committee on 13 January 2010 to pursue a prosecution for non-compliance with an enforcement notice served.
3. Comment on the complainant's record of the information available to the public prior to and at the Planning Committee meeting on 3 March 2010 about the development at 2 West Street.
4. Say why the planning case officer for 2 West Street was replaced following the two committee meetings when consideration of the development was deferred.
5. Comment on the complainant's record that misleading information was given to the Planning Committee on 3 March 2010 about light assessments and a decision on a previous complaint to the Ombudsman.
6. Say what steps were taken to consider the complainant's formal complaint of 7 March 2010 and related correspondence.

Please bear in mind that your comments and any accompanying documents will usually be shown to the complainant.

The Ombudsman always welcomes attempts to settle complaints locally. Please let me know if you feel that this might be possible in this case.

Yours sincerely

Brian Miles
Senior Investigator

Enc: Copy details of the complaint

Magri, Helen

From: @lgo.org.uk]
Sent: 07 September 2010 09:13
To:
Subject: RE: Complaint by Mr Edmunds 10 000 639

Dear

Thank you for your email. Mr Miles is on leave until Monday 13 September 2010 so the end of this week will be fine.

Kind regards

Team Administrator

From: @portsmouthcc.gov.uk]
Sent: 03 September 2010 15:24
To: Brian Miles
Subject: RE: Complaint by Mr Edmunds 10 000 639

Dear Mr Miles

With reference to your email below, we are currently collating the information requested but unfortunately, due to leave commitments we will probably not be able to respond fully until the end of next week.

Please accept my apologies for any inconvenience caused.

Regards

Corporate Complaints Investigative Link Officer

Portsmouth City Council
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023 9283

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Magri, Helen

From: Brian Miles [B.Miles@lgo.org.uk]
Sent: 20 August 2010 18:00
To:
Subject: Complaint by Mr Edmunds 10 000 639

Dear Helen – thank you for the Council’s comments of 13 July 2010. I would be grateful if you could forward additional information as follows:

1. The record of the meeting between the Strategic Director and City Solicitor and the Internal Audit Manager in late November or early December 2009 held to discuss the complainant’s initial allegations of corruption.
2. The record of the meeting held on 18 January 2010 between the Strategic Director and City Solicitor and the Chair of the Standards Committee to discuss the complainant’s further complaint of alleged corruption.
3. The record of a meeting held between Planning and Legal services to discuss the evidence produced by the complainant at the Planning Committee on 3 March 2010 (as referred to in page two of the Council’s response of 13 July 2010).
4. The report of the specialist planning lawyer on the scope for a possible prosecution for non-compliance with an upheld enforcement notice for 2 West Street and that recommended that the Council did not prosecute (as referred to also in page two of the Council’s response of 13 July 2010).
5. Any further comments the Council wishes to make in relation to the complainant’s letter of 17 June 2010 and amended statement of complaint, as forwarded to your authority on 7 July 2010.

I would be happy to discuss the above.

Brian Miles
Senior Investigator | DL: 024 7682 0034 |
The Oaks No 2 | Westwood Business Park | Westwood Way | Coventry | CV4 8JB |
www.lgo.org.uk |

Local Government
OMBUDSMAN

NOTICE – This message contains information intended only for the use of the addressee named above. If you have received this message in error please advise us at once and do not make any use of the information.

Magri, Helen

From: -
Sent: 14 June 2010 11:23
To: 'Brian Miles'
Subject: RE: Complaint by Mr K Edmunds 10 000 639/B2/BAM

Dear Mr Miles

I acknowledge receipt of the complaint by Mr Edmunds of 23 Broad Street, Old Portsmouth. Our response will be sent by 9 July 2010, however should there be a delay I will write and let you know when you can expect to receive our response.

Regards

Corporate Complaints Investigative Link Officer

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-----Original Message-----

From: Brian Miles [mailto:B.Miles@lgo.org.uk]
Sent: 11 June 2010 18:22
To: Local Government Ombudsman
Subject: Complaint by Mr K Edmunds 10 000 639/B2/BAM

Please find attached an enquiry letter and complaint details. Thank you

Brian Miles
Senior Investigator | DL: 024 7682 0034 |
The Oaks No 2 | Westwood Business Park | Westwood Way | Coventry | CV4 8JB |
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Magri, Helen

From: Brian Miles [B.Miles@lgo.org.uk]
Sent: 11 June 2010 18:22
To: Local Government Ombudsman
Subject: Complaint by Mr K Edmunds 10 000 639/B2/BAM
Attachments: Cx enq.doc; complaint_correspondence.PDF; complaint_correspondence_10_000_639.doc; complaint_correspondence__doc; Complaint_to_LGO_-_case_reference_10000639.doc

Please find attached an enquiry letter and complaint details. Thank you

Brian Miles
Senior Investigator | DL: 024 7682 0034 |
The Oaks No 2 | Westwood Business Park | Westwood Way | Coventry | CV4 8JB |
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Complaint_to_LGO_-_case_reference_10000639

CaseId : 10000639

Created and Sent on : 04/05/2010 at 09:58

Created by : Harpreet Chhokar

Emailed from address : forwarder@lgo.org.uk

Email Subject : Complaint to LGO - case reference 10000639

Mailed to :lgocomplains@portsmouthcc.gov.uk

with attachments :

http://lgo7:80/CaseDocs/2010_4/10000639/19-04-2010-634072712959187396-0.doc - council ack 10000639

http://lgo7:80/CaseDocs/2010_4/10000639/CASE_10000639_3.PDF - complaint correspondence

http://lgo7:80/CaseDocs/2010_4/10000639/CASE_10000639_1.doc - LETTER 3 - 10 day referral

Email Body :

04/05/2010

Our ref: 10 000 639
(Please quote our reference when contacting us)

Dear

Could you please advise if there is an update on this complaint, at this stage I am looking to know if the complaint is actually in your complaints process and the day the complaint was received by the council.

Yours sincerely