

**Complaint reference:**  
16 000 430

**Complaint against:**  
Bracknell Forest Council

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

Summary: The Council gave Mr X incorrect information about the community infrastructure levy. But, this error did not cause the injustice claimed by Mr X of having to pay a levy of over £90,000.

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## **The complaint**

1. Mr X says the Council was negligent, giving him wrong planning advice that led to him starting building work on his new family home before he had planning permission and a 'self build' exemption from the community infrastructure levy (CIL). Later the Council told Mr X he was liable to pay CIL, of different amounts. And, after granting planning permission, the Council demanded Mr X pay CIL of about £90,000. Mr X says he had to sell his new home to pay the CIL. Mr X also says the stress and pressure of what happened ruined his and his young family's life and had a dramatic negative impact on their health.

## **What I have investigated**

2. I have investigated that part of Mr X's complaint about the Council's planning advice. But, in doing so, I have not considered Mr X's allegations of negligence. My reasons for not investigating negligence are set out at paragraphs 52 and 53 of this statement.

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

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
4. The law says the Ombudsman cannot normally investigate a complaint when someone can take the matter to court. However, she may decide to investigate if she considers it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c)*)
5. The Ombudsman cannot investigate a complaint if someone has appealed to a government minister. The Planning Inspectorate (PINs) act for a government minister in deciding appeals about council planning decisions. (*Local Government Act 1974, section 26(6)(b)*)

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6. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

## **How I considered this complaint**

7. I have:
- considered Mr X's written complaint and supporting papers;
  - talked to Mr X about the complaint;
  - asked for and considered information from the Council about the complaint;
  - shared the Council's information with Mr X; and
  - shared a draft of this statement with Mr X and the Council and considered their responses.

## **What I found**

### **What should happen**

8. Most development needs planning permission from the local planning authority (LPA). Developers may ask the LPA for 'pre application advice' about development proposals before making a planning application. Pre application advice does not bind the LPA. So, an LPA may refuse planning permission for development it has viewed favourably at the pre application stage.
9. On receiving a planning application, the LPA must check it is complete. If not, it will ask the developer to provide the missing information. Once the LPA has a complete application it usually has eight weeks to decide whether to grant or refuse planning permission for the proposed development. The LPA can ask the developer for more time to decide the application. But, after eight weeks, the developer can appeal to PINs (see paragraph 5) against a deemed refusal of planning permission by the LPA.
10. A senior officer decides most planning applications acting for the LPA. But, councillors on the LPA's planning committee decide some applications. And, most LPA's have procedures allowing councillors to 'call in' an application for decision by the planning committee.
11. If development takes place without the necessary planning permission, there will be a breach of planning control. The LPA must investigate properly reported breaches but it does not have to take enforcement action. And, an LPA can invite the developer to make a retrospective (late) planning application for the unauthorised development. Inviting a late application does not necessarily mean the development will receive planning permission.
12. LPAs may introduce CIL in their area. A CIL is a financial charge on development. LPA's use CIL money for public works to support local development, for example, green spaces and transport services. Legal rules reduce or remove the need to pay CIL for some development. For example, people that build (or extend) their own homes and then live in them for three years do not need to pay CIL.
13. However, self builders must follow legal rules to secure a CIL exemption. So, before a self builder starts work on their home/extension, s/he must send the LPA the relevant completed CIL forms. These forms include Form 7: Self Build Exemption Claim Form Part 1 ('Form 7: part 1'). The LPA must also give the self

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builder written notice of its decision on the claim before work starts. If work starts before an exemption claim is made and decided, CIL becomes payable in full.

14. The legal rules also say CIL becomes payable in full if the self builder does not:
- give the LPA advance notice of the start date for the works ('the Commencement Notice'); and
  - (within six months of completing the self build) give the LPA a Form 7: part 2.

There are legal appeal rights against LPA CIL decisions but, self builders must both make their appeal and receive the appeal decision before starting work. If work starts, the appeal will lapse.

15. The Government's Planning Practice Guidance (PPG), which is available on the internet, gives details about CIL. The national Planning Portal website holds planning application forms and relevant CIL forms, with guidance notes for their completion. The PPG, and the Portal guidance notes, both say claims for, and decisions on, CIL exemptions must take place before development starts. And, Form 7: part 1 starts:

"An exemption for a self build home must be granted prior to the commencement of the development AND a Commencement (of development) Notice must be received by the [LPA] prior to the date of commencement of the development. The applicant will otherwise be liable for the full levy charge."

In completing Form 7: part 1, the applicant must 'declare' that s/he understands:

"That [their] claim for self build exemption will lapse where development commences prior to the [LPA] informing me of its decision."

16. The Council's website currently includes information about its CIL and gives links to the PPG and Portal for CIL information, guidance and forms.

### **What happened**

17. Mr X buys a property in need of renovation on a large plot of land ('the Site'). Mr X takes pre application planning advice from the Council, as LPA, about developing the Site. The Council, apologising for its delay (about six weeks), gives Mr X pre application advice.

18. Mr X applies for planning permission to build a house on the Site. The Council refuses Mr X's application. This surprises Mr X and he appeals to PINs. Meanwhile, Mr X and his young family are living in a caravan on the Site and want to be in a permanent home before the next school year.

19. The Council introduces CIL for development in its area. Mr X decides he cannot wait for a PINs appeal decision, and applies to the Council for planning permission to extend the existing property. A council officer ('Officer T') emails Mr X saying his application is not complete. Officer T's email also asks Mr X to complete a CIL form saying:

"Your application is exempt from paying the CIL fee, however you must fill out the form accordingly to prove this."

20. Meanwhile, refurbishment work starts on the existing property. Testing reveals structural problems with the property; part of which collapses. Mr X withdraws his extension application and applies for planning permission to build a replacement house ('the Application'). Mr X says he is no longer employing his own

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- professional advisers and is relying on the Council's planning officers to give him accurate guidance.
21. Mr X starts work on the replacement house, which work includes demolishing the existing property. The Council says its planning enforcement officer tells Mr X:  
"any and all work undertaken to date, and any works from this point forward, continued without planning permission, have been and will be undertaken at your own risk and expense."
  22. Mr X emails Officer T saying he has forgotten to send a CIL form with the Application and asking if he is liable for CIL on the new house, which is a self build. Officer T replies saying Mr X must fill out a CIL exemption form, which 'must be sent to the Council before it decides the Application.' Officer T's email includes a web link to the PPG guidance on CIL self build exemptions.
  23. The Council does not receive any CIL forms from Mr X but registers the Application, triggering the eight weeks for a decision. As the old property is now demolished, the Application is 'part retrospective'. A planning case officer ('Officer P') assesses the Application. Officer P visits the Site and finds external walls for the new house are in place.
  24. Shortly before the eight weeks expires, Mr X emails Officer P asking about CIL as, after reading the guidance, he is not clear how it applies to his new house. Officer P emails Mr X saying CIL is payable on the new house because work has started on the Site ('Email One'). And, Email One says the Council will calculate Mr X's CIL on the increase in floor area between the demolished and replacement houses. Email One includes the web link to the PPG on CIL and self builds.
  25. The Council misses the eight week target for deciding the Application. Councillors 'call in' the Application for decision by the Council's planning committee. About 12 weeks after accepting the Application as complete, the Council's planning committee vote to grant planning permission for Mr X's new house. About 10 days later, Mr X asks Officer P when he will receive the planning permission. Officer P emails Mr X saying the Council has discovered it must calculate CIL when granting planning permission ('Email Two'). So, the Council calculates Mr X's CIL on the floor area of the new house, with no reduction for the floor area of the demolished property.
  26. The Council issues planning permission for the Application and gives Mr X information about the CIL he must pay (over £80,000). The Council tells Mr X it can add charges to the CIL because it has not received any CIL forms from him. The Council gives Mr X information about appeal rights and web links for CIL information.
  27. Mr X challenges the Council's notice and, referring to events since he bought the Site, says he should not have to pay CIL. The Council's Executive Committee of councillors consider Mr X's case. Councillors decide to send Mr X a CIL demand. The Council sends Mr X a CIL demand, adding a £2,500 charge. The demand refers to Mr X's appeal rights, and gives a web link for appeal information.
  28. In the months that follow, Mr X tries to appeal the demand notice (see paragraph 14) and complains to the Council. Mr X also offers to pay £15,000 to resolve the CIL dispute. The Council take independent legal advice and confirm Mr X must pay the CIL demand. The Council also offers to place a charge on Mr X's new home so he does not have to pay CIL until he wants to move.
  29. Mr X sells the Site and pays CIL, plus charges, of over £90,000.

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30. In summary, Mr X's position and case is:
- Council officers repeatedly assured and advised him during telephone calls and in emails that CIL was not payable;
  - it was reasonable to expect the Council's information would be correct but it was not;
  - Council officers were fully aware of his situation but were unprofessional, negligent, and misleading and tried to ruin him financially with a £90,000 CIL demand;
  - it is obvious he would not have started or continued to build the new house if he had known he would face an unplanned bill of £90,000;
  - the part collapse of the existing property was beyond his control and, as it was unsafe, he had to rebuild;
  - it is unfair, unjust and contrary to CIL aims to demand payment for his new house when it simply replaced an existing family home; and
  - without the Council's delays and 'unfathomable' planning decisions, he would have received planning permission for a new house before it introduced CIL.
31. In summary, the Council's position and case is:
- planning law can be complex but "the basic principle that permission precedes work is not";
  - Mr X built his new home before receiving planning permission and the legal rules mean he must therefore pay CIL;
  - it acted reasonably in taking independent legal advice and had no discretion to waive the CIL;
  - in 'recognition of the stress and difficulty of paying an unexpected bill', it offered to defer payment of CIL by placing a charge on the new house; and
  - it accepts Email One gave wrong information about calculating Mr X's CIL but, this did not affect Mr X's position as the old property was already demolished and construction of the replacement well advanced.

### **Is there fault causing injustice**

#### **Early events**

32. I recognise Mr X and his family wanted to move into their new home before the start of the school year. Mr X says without the Council's early delay and unreasonable decisions, planning permission for that new home would have been granted before it introduced CIL.
33. The Council did miss its time target for responding to Mr X's 'pre application' planning enquiries: and it apologised to Mr X for doing so. Mr X says the delay was six weeks. So, without this delay, all following events might have taken place six weeks sooner than they did.
34. Having received pre application advice, Mr X applied for planning permission for a new house; which the Council refused. Mr X appealed the Council's decision so I cannot investigate how the Council handled that application (see paragraph 5). (But, I see no evidence of delay by the Council in dealing with that application.)
35. Mr X then applied for planning permission to extend the existing house but withdrew that application, within eight weeks, following its partial collapse.

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Between making and withdrawing the extension application, the Council introduced CIL and asked Mr X to provide CIL forms. And, CIL was in place when Mr X made the Application.

36. I have carefully considered the date: Mr X made the Application; the Council accepted the Application as complete; and eight weeks after the Council accepted the Application. If the Council had met its pre application time target, Mr X might have made the Application before it introduced CIL. And yet, the Council's eight weeks to decide the Application would still have fallen after its CIL date. On balance, I therefore find CIL would have applied to the Application even if the Council had not delayed its pre application advice.

### **The Application - submission**

37. I recognise Mr X was in a difficult position. The next school year was approaching and his family were living in a caravan near an unsafe building.
38. I also accept Mr X understood that, as a self build, his family's new home would be free from CIL. Indeed, the law provides a self build CIL exemption. However, to secure that exemption, self builders must comply with the relevant legal rules. And, that meant Mr X needed to complete, and send the Council, CIL forms; and not start work before he had planning permission and a decision on his CIL exemption claim. This did not happen: Mr X did not complete any CIL forms and his new house was substantially complete when the Council granted planning permission on the Application. So, Mr X was liable to pay CIL on the new house.
39. The question for me is whether, and to what extent, Council fault is the cause of the financial predicament faced by Mr X on receiving planning permission.
40. Council officers should give people accurate information and it was reasonable for Mr X to expect this from the Council's planning officers. And yet, council officers do not act as professional advisers to individuals and they are not agents for planning applicants. Rather, their role is to assess and decide planning applications and, where CIL applies, calculate charges on granting permission.
41. Here, I have no reason to doubt that Mr X had many telephone conversations with Council planning officers about the Application. But, I have no recordings of these calls. I am therefore unlikely to be able to reach an objective and evidenced based view about what each person said during those calls. However, I do have copies of written correspondence between Mr X and the Council, which include comments about building materials and landscaping for the Site. I also have Officer T and Officer P's emails about CIL. I have given most weight to the written correspondence.
42. A few days after Mr X made the Application, Officer T emailed Mr X saying he needed to complete and return forms to get a CIL exemption. Officer T's email told Mr X where he could find information about CIL. Officer T's actions here are proportionate and reasonable. It was not the Council's responsibility to consider and advise on the detailed application of CIL rules to the Application. And, on balance, I do not find the Council at fault because Officer T's email did not tell Mr X the self build exemption needed to be in place before he started work. Indeed, the expectation is that people secure planning permission before starting development.
43. Similarly, soon after making the Application, the Council's planning enforcement officer took suitable and reasonable action in telling Mr X that working without planning permission was at his own risk and cost. The enforcement officer did not

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fall below acceptable administrative standards because he did not identify and comment on specific risks and costs.

44. As the Council has said, planning law can be complex. And yet, Form 7: part 1 clearly and succinctly sets out the need to secure a self build exemption before starting work, otherwise the applicant is liable for CIL. The Council had properly signposted Mr X to what he needed to do and where he could access information about CIL and self build exemptions. It was for Mr X to read the guidance and complete the necessary forms, which would have drawn his attention to the consequences of starting work before the Council made its decisions. It was not the Council's fault that Mr X did not complete any CIL forms before it granted planning permission for the Application.
45. On balance, I do not find the Council fell below acceptable administrative standards in dealing with Mr X at the time of the Application. There is no fault here.

### **The Application – Officer P's emails about CIL liability**

46. It was about two months after receiving Officer T's emails that Mr X asked Officer P about CIL. Officer P's Email One says Mr X is liable to pay CIL having started work on Site. This is correct.

However, demolition of the old house took place before the Council accepted the Application as complete. So, throughout the 14 weeks it took the Council to decide the Application, it could not take account of its floor area in calculating CIL. The Council therefore accepts the information it gave Mr X in Email One about calculating CIL was wrong.

47. Using this, wrong, basis for calculating CIL, Mr X estimated his CIL bill would be about £40,000. Mr X continued working on the new house. Five weeks later, Mr X receives Officer P's Email Two and then his planning permission and a formal CIL notice for over £80,000. I recognise the seriousness and distress this caused Mr X and his family. Indeed, the family felt they could not make the house their family home and sold it, paying the CIL demand (plus charges). And yet, Mr X had always faced a CIL bill of this size because he did not claim, and secure, a self build exemption before starting work on the Site.
48. However, Mr X says he would have cut his losses if he knew his CIL would be over £80,000. So, what is likely to have happened if Email One had given Mr X the correct information about calculating CIL? Mr X then owned land that included a part built house that did not have planning permission. And, the Council's CIL would apply to planning applications to develop the Site. Any potential buyer of the Site would take account of those circumstances, which would probably affect the price. When Mr X did sell the Site, it had a completed house with planning permission, and CIL was payable. Overall and on balance, I do not find the error in Email One, which remained uncorrected for five weeks, is likely to have substantively affected Mr X's position.

### **Summary**

49. I recognise the serious distress experienced by Mr X and his family. As a self builder looking to replace an existing house, Mr X could have claimed a CIL exemption. The Council acted properly and correctly in telling Mr X he needed to complete and return CIL forms; signposting him to CIL information; and advising that building without planning permission was at his own risk and cost. It was for Mr X to complete and return those forms, using the accompanying guidance

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notes. The Council's role was to assess the Application and decide whether to grant or refuse planning permission.

50. Unfortunately, Mr X did not complete the relevant CIL forms, which clearly set out the consequences of starting work without securing a self build CIL exemption. I find demolishing the old house and building its replacement before receiving planning permission and without following CIL procedures led to Mr X's substantial CIL bill. Overall and on balance, I do not find the error in the Council's Email One is the cause of Mr X's claimed injustice.

### **Final decision**

51. I completed my investigation finding the Council gave incorrect advice about how it would calculate CIL on the Application but this was not the substantive cause of the injustice Mr X claims.

### **Parts of the complaint that I did not investigate**

52. Mr X says the Council has been negligent in giving him advice about CIL. Allegations of negligence are legal matters for the courts to decide. If Mr X wishes to pursue a claim of negligence against the Council, he could start legal action.
53. Mr X says the existence of the CIL demand and his dispute with the Council about its payment seriously affected the value of the new house. In paying the CIL and selling the house at a reduced value, Mr X says he has suffered considerable financial loss. On balance, I therefore consider it reasonable for Mr X to take legal action if he wishes to claim those financial losses arise because of the Council's negligence (see paragraph 4). I have not therefore investigated Mr X's complaint about negligence.

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