

9 October 2014

Complaint reference:
14 000 911

Complaint against:
Bracknell Forest Council

Local Government
OMBUDSMAN

The Ombudsman's final decision

Summary: The complaint is about the service the Council provided in an assessment. My view is there were some faults by the Council. The Council has offered a remedy. No extra remedy is needed, so I have completed my investigation.

The complaint

1. The complainants complain about the Council's assessment and consultancy service for a Code for Sustainable Homes Assessment. They say:
 - a Council officer assured them the service would get them the rating they needed. But the advice, assistance and consultancy was not enough to allow them to achieve the rating;
 - the Council did not tell them the service was part of a pilot scheme. And, as it was a pilot scheme, there should have been better oversight;
 - the Council's assessor was rarely available to provide advice. She was off work for four months. And in the months before that she was seldom available and often did not reply to requests for advice and information;
 - they kept asking the Council "what do you want us to provide?". They say they could not get an answer to this question. Without this they could not provide the information needed.
2. The complainants say these faults led to a delay and extra costs in the assessment of their building.

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. 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. As part of the investigation, I have:
 - considered the complaint and the documents provided by the complainants;
 - made enquiries of the Council and considered its response;
 - spoken to the one of the complainants;
 - sent my provisional view and considered the responses I received.

What I found

Background

5. The Code for Sustainable Homes Assessment ("the Code") is an environmental assessment method for new homes. It assesses environmental performance in a two-stage process (design stage and post construction stage) using objective criteria and verification. The results of the assessment lead to a rating between Level 1 and Level 6. The Building Research Establishment (BRE) manages the implementation of the Code under contract to the government.
6. One of the Council's officers was a qualified Code assessor. The Council decided to offer an assessment service for use by developers building single properties. It decided, at first, to pilot the service.
7. The Council's policy is that, as a condition of planning permission, all new homes must meet Level 3 of the Code.

What happened

8. The complainants applied for planning permission to build a new house on the land adjoining a house they owned. The Council granted permission. Conditions of the permission included:
 - that before work began the developer needed to submit a Sustainability Statement. This needed to include either a design stage report or a pre-assessment estimator. The Officer's Report for the application says this was included because there was no Sustainability Statement or pre assessment evaluation included with the application;
 - within a month of the building's first occupation, the developer needed to provide a certificate demonstrating the building had achieved Level 3 of the Code.
9. In January 2012 the complainants decided to use the Council's assessment service for the Code. The Council offered to waive the fees for its consultancy service as an addition to its assessment service. The Council says the complainants were aware its service was new and a pilot scheme and that this was why it offered the free consultancy. The complainants dispute this. There is no contemporaneous written record of this advice.
10. On 19 January a manager emailed one of the complainants advising them they should submit the application for the Code as far in advance as possible, before work on the house started, "...to avoid abortive work and loss of points in your assessment".
11. A week later the manager emailed again. He advised the Council would provide free consultancy "...to get the scheme successfully through the assessment".
12. Shortly after, the Council's confirmation letter advised the free consultancy was to "assist you in achieving compliance...This will allow you to contact your assessor freely for advice during the duration of the service". The letter continued:

"For us to undertake the service you will be required to submit a full set of construction plans and specifications, and all the other information required to demonstrate compliance with the Code for Sustainable Homes...A successful assessment cannot begin until all relevant information has been deposited".

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13. On 20 February one of the complainants and their architect met with the Council's assessor. The assessor gave the complainant a copy of the Code's categories and signposted them to the electronically available technical guidance. The Council says the architect advised that she had no experience of the Code.
 14. According to the Council, in March work on the site began. The Council had not, by then, received any of the information it needed to carry out the assessment. It says, to get maximum points from the Code, "it is essential a compliant design is agreed prior to work starting...".
 15. In April the assessor:
 - contacted the Council's Planning Department for the complainants;
 - contacted the complainants' architect. The architect sent the assessor drawings. The Council says these were not detailed enough for assessment purposes;
 - completed the pre-assessment estimator. This allowed the complainants to discharge one of the planning conditions (see paragraph 8).
 - wrote a Sustainability Statement. The Council says this was an "additional service outside the agreement".
 16. I have checked the Council's records of its contact with the complainants from then:
 - May: the assessor responded to a query from the complainants. She also advised about dealing with other issues. She advised the complainants it was not in her remit to deal with the planning conditions;
 - June: the architect submitted a drawing. The Council says this did not have enough detail. The assessor gave the architect a list of instructions of what she needed to provide to meet the Code;
 - June: the assessor sent the architect a document about energy and emissions which had a list of instructions;
 - July: the assessor provided further advice and an update;
 - August: the assessor emailed the complainants and architect to provide advice;
 - September: the assessor provide an update to the complainants;
 - September: the assessor provided advice and also clarification about a planning query;
 - October: the assessor contacted the complainants several times checking some information and reminding them of other information she needed.
 17. The Council says the assessor was away from work unexpectedly from October to the beginning of February 2014. It says it did not have the full package of information from the complainants before the time she was off work. It says the BRE's reporting system does not allow an assessor to submit a report until all the mandatory information had been satisfied.
 18. By September the work on the house was approaching the stage where the roof was complete. The house was completed in January 2014.

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19. In February, after her return to work, the assessor advised the complainants about a problem with their hydrologist's report. The Council advises the hydrologist should have sent their report to the assessor for checking and approval "rather than the assessor just passing it...The hydrologist should have done this but the Code appeared to be new to the hydrologist's firm". The complainants say the hydrologist was recommended to them (not by the Council) because of its experience of using the Code.
 20. The complainants were unhappy with the service the Council was providing. The manager of the service offered to end the contract and refund the fees, so an external assessor could take over the project. The complainants considered this, but decided to continue using the Council's service, as the external assessors were much more expensive.
 21. After this, the Council received the hydrologist's report. But BRE rejected the hydrologist's design.
 22. At the end of March, the assessor wrote to the complainants listing all the outstanding requirements for meeting the Code at the design stage.
 23. According to the Council, it received information about some construction material at the beginning of May. It had asked for this in February. The assessor's view was many of the products were not to the required environmental standard. Her view was the builder did not know what the requirements of the Code were.
 24. In April the Council agreed to move the assessment to the post construction stage.
 25. By June the Council says it was clear the building could not get the number of credits to meet Level 3 of the Code. This was because some of the evidence and work needed to have been applied for and installed before the building was completed. The assessor contacted the Planning Department for the complainants to find out how they could meet the planning condition. Based on the advice received, the complainants applied to vary the condition. The Council consulted on this. In October it agreed to vary the conditions, so a Level 2 Code would be acceptable.
 26. The complainants complained through the Council's complaints procedure. The Council's response, including to my enquires, said:
 - the complainants tried to use the assessor as a designer and as a liaison with Planning. That was outside the scope of the agreement;
 - there had been an unacceptable four month break in the service it supplied. But this had little effect on the points achieved on completion of the work;
 - the statement the manager gave (see paragraph 11) was too loose and was open to misinterpretation;
 - The complainants' architect mainly supplied information prepared for other purposes. The only document specifically supplied for the Code was the June plans (see paragraph 16), which was three months after work had started;
 - the assessments at the design stage and post construction stage were the same. But compliant features could not be added or altered in the post construction stage. The developers should have collected the necessary paperwork and certificates throughout the build and then submitted them at the end;
 - it offered to refund the fees in interests of "good customer service". The offer to refund the complainants' fees remained open.

Was there fault by the Council?

27. The Council accepts the assessor was not available for an "unacceptable" period of around four months. This delay was fault.
28. From the available evidence, I cannot conclude there was fault by the Council in the consultative role it provided. Its records show the Council warned the complainants of the dangers of starting work on the house before they had achieved a design stage assessment that met Level 3 of the Code. And, according to the Council's records, several documents the complainants submitted did not have the details needed to meet the Code's requirements.
29. The complainants' view is the assessor did not provide enough detailed advice. But, according to the Council's file, the complainants' architect, builders and hydrologist were not fully aware to the Code's requirements. My view is the Council could not reasonably have been expected to substitute for a lack of technical knowledge. The records suggest the advice the assessor provided was adequate.
30. A contributory cause in the confusion about the Council's role was likely to have been the Council's statement to the complainants (see paragraph 11). But around the same time of that statement, my view is the Council did set out clearly what the complainants needed to provide (see paragraph 12).
31. There is a lack of a written record that the Council advised the complainants that its service was a pilot scheme. My view is there should have been a record and the lack of one is fault. But it does cause a conflict of evidence about what advice about the pilot the Council gave the complainants.

Did the fault cause an injustice?

32. The reasons the complainants did not achieve the necessary level of the Code was not because of the faults identified in the preceding section. The complainants did not provide the documents the Council needed in the time before the assessor was unavailable. And there were problems after the assessors return with other documents. The Council's offer to refund the fees provides a remedy for the faults identified.

Final decision

33. There was some fault: in the lack of an assessor for four months, in the assurances the Council gave the complainants and a lack of a written record. But the Council has offered a remedy. And these faults did not significantly lead to the complainants' claimed injustices. I have completed my investigation.

Investigator's decision on behalf of the Ombudsman