

The Ombudsman's final decision

Summary: Mr X complains the Council delayed and then ended an agreement for him to buy the lease on some land for a housing scheme. He wants repayment of all planning and legal fees paid to the Council. He also wants compensation and a public apology. The Ombudsman will not investigate this complaint as we are unlikely to find fault in the Council's actions. And Mr X can ask the courts to decide whether the Council is liable for his financial losses.

The complaint

1. Mr X's Community Interest Company (CIC) obtained a three-year agreement to buy the lease on some land from the Council in 2016. He complains the Council caused delay of more than a year. He says the Council's response to his concerns does not acknowledge the delays, the lack of responses to specific requests or refusal to negotiate given changed circumstances.
2. He wants:
 - Repayment in full of all planning and legal fees paid his company to the Council
 - Compensation of all legal and architectural fees, expenses and payments incurred and/or payable by his company or himself personally
 - Negotiated compensation for loss of potential profits from the approved development

The Ombudsman's role and powers

3. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
4. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I refer to this as 'injustice'. We provide a free service but must use public money carefully. We may decide not to start or continue with an investigation if we believe it is unlikely we would find fault. (*Local Government Act 1974, section 24A(6), as amended*)

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5. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)

How I considered this complaint

6. I considered the information provided by Mr X and the Council. I also considered Mr X's comments on the draft version of this decision.

What I found

7. Mr X's CIC agreed a three-year option to buy the lease on some land from the Council in 2016, for a housing scheme.
8. The original agreement signed by Mr X included:
- The developer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement or any part of it.
 - The permitted user of the proposed lease to be agreed by 18 September 2016
 - A sustainable business plan and financial model for the proposed development to be submitted by Mr X and approved by the Council by 18 September 2017
 - Proof of secured funding for the development to be submitted by Mr X to the Council's reasonable satisfaction by 18 September 2018
9. The Council agreed to extend the deadlines by a Deed of Variation:
- The permitted user of the proposed lease to be agreed by 18 December 2018
 - A sustainable business plan and financial model for the proposed development to be submitted by Mr X and approved by the Council by 18 December 2018
 - Proof of secured funding for the development to be submitted by Mr X to the Council's reasonable satisfaction by 18 December 2018
10. Mr X says the Council failed to respond to his request to change the company structure to enable him to enter a private sector partnership.
11. In its response to Mr X's former MP, the Council says the original deal was viewed sympathetically specifically because of the Community Interest Company (CIC) status. The proposed change in status meant the agreed preferential terms would benefit a private limited company. The Council says it would not have entered into the agreement if such a company approached the Council with the same proposal. And would infringe the first clause in the agreement as outlined in paragraph 8 above.
12. Officers have reviewed the Council's records on this matter. It says Mr X's request to change the management status was referred to its Regeneration Divisional Manager for a decision. However, before any decision was made Mr X confirmed the change was no longer required. The Council says its records show officers checked this with Mr X who confirmed the proposed change in company status was definitely not required. It says Mr X did not raise this point again until five months later.

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13. I have reviewed the emails between Mr X and the Council. In August 2018 he advised the Council he had another potential partner 'waiting in the wings' who was totally comfortable with the company remaining a CIC. The Council's response asks Mr X if his company will be remaining a CIC and if he will confirm he does not wish to change the status to a limited company. Mr X did not respond to this query.
 14. On 18 January 2019, the Council wrote to Mr X advising he had 10 working days to complete the arrangements described in paragraph 9 above.
 15. On 28 January Mr X wrote to the Council saying the CIC matter was 'causing concern again'. He asked if he could meet the Council managers to see if he would convince them to think again about his company changing to a limited company.
 16. The Council confirms Mr X failed to adhere to the long stop dates described in paragraphs 8 & 9 above.
 17. As Mr X had not met either the original or extended deadlines the Council was within its rights to end the agreement. It gave notice to do so on 31 January 2019.

Assessment

18. Mr X says the Council caused delays. Matters such as this are undoubtedly complex and involve several Council departments including planning, property asset management and legal. It would not be unusual for some delay to occur. I also note that Mr X failed to meet the original or extended deadlines on the agreement. Due to these failures the Council was entitled to end the agreement.
19. I understand Mr X is seeking repayment and compensation of the expenses he has incurred. However, this is not something the Ombudsman can achieve for him. Whether the Council is liable for his losses is a legal matter. The Ombudsman considers complaints about Council's administrative actions. His role is not the same as a court of law. A court of law is the suitable body to decide contested questions of law (such as liability for financial loss). It also decides whether compensation must be paid if the Council has been negligent and to enforce any award of compensation. Therefore, it is not unreasonable to expect Mr X to go to court to seek a remedy.

Final decision

20. I will not investigate this complaint. We are unlikely to find fault and the questions of liability and compensation are ones for the courts.

Investigator's decision on behalf of the Ombudsman