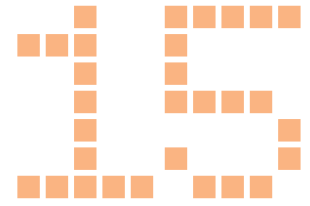


OTHER INFORMATION

Redress

When the planning system fails you



This is Sheet 15 of The Planning Pack. This pack has been written by Planning Aid, with assistance from Urban Forum. The Planning Pack is endorsed by the Royal Town Planning Institute

Introduction

This sheet focuses on the topic of redress. It is Sheet 15 of a series of 17, that forms an information pack to help you understand and get involved in the planning system.

The sheet outlines what can be done if all your efforts to influence planning in your area have failed and you feel that things have not been done correctly. This information sheet outlines five non-planning remedies available, the situations in which each may apply and the factors to bear in mind when considering their use.

Most of these redress options will involve some considerable initial expense in employing solicitors and/or barristers. Ultimately the courts may award compensation and costs, but there is the risk that you may lose your case or even win the case but not be awarded costs.

1. The Local Government Ombudsman

This is the cheapest way of seeking redress, but can be used only in certain circumstances. The **Local Government Ombudsman** (LGO) examines complaints from people who feel that they have been disadvantaged because a local authority has not made a decision in the proper way. This is known as

maladministration. The Local Government Ombudsman is not concerned directly with the 'merits' of any case, but in the methods used – or not used – to come to a decision. Typical planning examples of maladministration include:

- >> giving incorrect information or misleading advice
- >> failing to take account of information relevant to a planning decision or taking account of an irrelevant matter
- >> failing to give proper reasons for a decision
- >> failure or unreasonable delay in investigating and enforcing against breaches of control.

In most cases before the Ombudsman can pursue a complaint, you must give the local authority a chance to respond. You should write a letter to the Chief Executive or a Senior Officer setting out the problem. If the local authority's response here is unsatisfactory or there is no reply for a long time, you can write or e-mail the Local Government Ombudsman with your complaint.

There are several restrictions on the type of complaints the Ombudsman can pursue, for example you should make a complaint within 12 months from the day the problem was first identified. The Ombudsman cannot normally look at matters if you had a statutory right of appeal. The Ombudsman's advice line on Lo-call 0845 602 1983 or the website, www.lgo.org.uk will give more information about what the Ombudsman can do.

If the authority has not acted properly, the Ombudsman goes on to assess what happened and what would probably have happened if there had been no fault. For example, would the building have been sited differently or would there have been different conditions attached to the permission? Remedies include: cancellation of a planning consent (which is exceptional), an apology, or measures may be recommended to mitigate adverse effect on neighbours. For example screening either with plants, a wall or fence, double glazing or frosted glazing and redesigning the complainant's garden to provide a more private sitting area.

Compensation for the loss of value to a property is only proposed where loss of amenity is permanent and cannot be remedied by other means. A modest payment may be justified for a lost opportunity, for example the opportunity to have your objections to a proposed development taken into account.

Be aware that the Local Government Ombudsman has no powers to reverse planning decisions or to require a local authority to pay compensation. However, if the investigations reveal maladministration, in 95% of cases the local authority agrees to make the redress the Ombudsman recommends.

In addition, the Ombudsmen may give advice to the authority on how to improve their administrative processes and on the importance of Government Guidance and codes of practice.

2. Judicial Review

In some cases a decision made by a local planning authority or the Secretary of State (DCLG) can be challenged in the High Court through **Judicial Review**. Decisions of the Court are normally made within six weeks.

The Judicial Review is not concerned with the planning merits of a case, but with its legality. For example, has the local planning authority gone beyond its statutory powers or misinterpreted the law.

Challenge through the High Courts is open to any person unhappy with a decision made by the Secretary of State or anyone with a sufficient interest in the matter concerned where the decision is made by the local planning authority.

High Court hearings can cost from £10,000 (recent cases costs have been between £15,000 and £30,000) and people applying must agree to pay both parties costs if they lose. Seeking this form of redress needs very careful consideration. You should obtain professional advice from a planning solicitor before proceeding with this type of action.

3. Injunctions

An application can be made to the County or High Courts for an **injunction** to stop or restrain a particular use of land or course of action (such as a new building) pending the hearing of a legal dispute. They are granted at the discretion of the courts.

For example, an injunction could be sought from the courts to delay construction of a building (which has full planning permission) while the court considers the details of a dispute with the developer, or preventing the demolition of a listed building whilst the planning position is sorted out. Injunctions are used quite often in **enforcement** cases (see Sheet 12).

Legal advice should be taken in order to serve an injunction. Any person seeking an injunction is likely to have to sign an undertaking to pay damages if the request is withdrawn. As with judicial review, this course of action needs very careful consideration.

4. Covenants

The enforcement of restrictive covenants may provide a means of opposing a development even when planning permission has been granted. Planning permission does not override a covenant. A covenant may restrict the use of land or housing density on a piece of land.

Developers may apply to the Lands Tribunal to have a covenant removed. Such an application would most likely result in a hearing to which interested parties can make representations. An injunction can be served on a developer who is alleged to have breached a covenant.

In practice, considerable research will probably be required in order to establish both the existence and effectiveness of a covenant, involving a search of property deeds and discussion with the Land Registry.

5. Rights to Light

If you occupy a property adjoining a proposed development you may have rights under the **Rights to Light Act 1959**. You should take advice from a solicitor or chartered surveyor where you consider a proposed development may affect a 'right to light'. It may be possible to obtain an injunction to stop proposed works.