

# Report

on an investigation into  
complaint no 07/A/06930 against  
London Borough of Ealing

6 December 2007

# **Investigation into complaint no 07/A/06930 against London Borough of Ealing**

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## **Key to names used**

Mrs Harding

The complainant

## **Report summary**

### **Subject**

Planning applications.

Mrs Harding complains about the Council's decision to grant a Lawful Development Certificate for an extension to her neighbour's roof which was too large to be considered as permitted development.

### **Finding**

The Council was wrong to issue a Lawful Development Certificate for an extension which exceeded the levels allowed under permitted development. The Council should have recognised the fact the planning permission was needed for the proposed extension. As this is unlikely to have been granted, Mrs Harding will have to live next door to an extension which is significantly larger than would have been the case if the Council had dealt with the matter properly.

### **Recommended remedy**

In order to remedy the injustice caused to Mrs Harding the Council should:

1. pay compensation to her based on the difference between the value of her property given the way her neighbour's property has been developed and the value it might have had, if her neighbour's property had been extended within the parameters of permitted development; and
2. pay her £500 to reflect the time and trouble involved in pursuing her complaint.

The Council should ensure that as part of its current review of its Development Services it considers what action to take to improve procedures and train officers, with a view to ensuring that Lawful Development Certificates are not erroneously issued in future.



## **Introduction**

1. Mrs Harding (not her real name for legal reasons) complains that the Council erroneously issued a Lawful Development Certificate for an extension to her neighbour's roof, resulting in a larger extension than would otherwise have been permitted.

## **Legal and Administrative Background**

2. The Town & Country Planning (General Permitted Development) Order 1995 provides for the roof of a semi-detached property, such as that of Mrs Harding's neighbour, to be extended by up to 50 cubic meters without the need for formal planning permission.
3. The Council has the power to issue a Lawful Development Certificate, confirming that an existing or proposed development does not require formal planning permission, under the terms of Section 24 of the Town & Country Planning (General Development Procedure) Order 1995.
4. Section 193(7) of the Town & Country Planning Act 1990 provides the Council with the power to revoke a Lawful Development Certificate, where a person is found to have knowingly or recklessly made a statement which is false in a material way.

## **Investigation**

5. My Investigator has visited Mrs Harding and the Council provided comments on her complaint. A copy of the factual parts of this report was provided to the Council and to Mrs Harding in draft. Where appropriate their comments are reflected in the text.

## **The Council issues a Lawful Development Certificate**

6. In January 2006 an agent working on behalf of Mrs Harding's neighbour applied for a Lawful Development Certificate for a 'rear roof extension and insertion of 2 rooflights in front roofslope'.
7. The plans submitted by the developer indicated that the existing roof at the rear of the property was mono-pitched, rather than the flat roof which existed. A Planning Officer visited the site and took photographs of the front and rear elevations which, due to the angle at which they were taken, neither confirm nor deny the existence of a mono-pitched roof.
8. The Planning Officer estimated the increase in volume to the property as a result of the proposed development, on the basis that the existing property had a mono-pitched roof, to be 47.39 cubic metres. The Council accepts that this was

an error. The true increase, if the development had been built in line with the plans and reflecting the fact that the existing property had a flat roof, would have been 75.36 cubic meters.

9. Based on his estimate for the volumetric increase, the Planning Officer prepared a report on 22 February 2006 recommending that a Lawful Development Certificate be granted for the proposed extension. This was checked by the Team Manager on the same day and the Certificate was issued by the Director of Built Environment the following day.

### **Mrs Harding complains about the development when work starts**

10. When the developer started work on the roof extension in the spring of 2006, it became apparent to neighbours, including Mrs Harding, that a significant development was taking place for which planning permission had not been obtained. This, in part, reflected the fact that the development being constructed was not in line with the plans submitted to the Council, as the rear extension was both wider and taller than indicated on the plans.
11. Mrs Harding initially pursued her concerns over the telephone with the Council's Planning Enforcement Team. When a member of that Team visited the development site he was able to confirm that the extension being built was substantially larger than should have been the case under permitted development rights. He was also able to confirm that the extension was not in line with the plans submitted in support of the application for a Lawful Development Certificate.
12. Mrs Harding wrote to the Council to complain about the development in July 2006. As no action was taken to stop the development, Mrs Harding made a formal complaint about the Council's handling of the matter on 26 January 2007.
13. When the Council replied to Mrs Harding's complaint on 20 April 2007, it accepted that there had been an error in issuing the Lawful Development Certificate. It confirmed that the development had exceeded the size shown on the plans. However, it pointed out that following discussions with the developer, he had agreed to reduce its size to 'no more than its lawful position' (i.e. to what had formed the basis of the Lawful Development Certificate). The Council apologised to Mrs Harding for the distress she had been caused.
14. The Council has subsequently confirmed that these changes resulted in an extension which increased the volume of the original building by 79.63 cubic metres, 4.26 cubic metres more than indicated by the plans and 29.63 cubic metres more than should have been allowed under the 1995 Order.
15. Despite these changes, the extension has the appearance of an additional storey when viewed from Mrs Harding's property.

16. Mrs Harding remained unhappy, as her objective was to have the Lawful Development Certificate withdrawn, and therefore pursued her complaint by writing to the Council's Chief Executive on 30 April 2007.
17. Before replying, the Council took external legal advice on the possibility of revoking the Lawful Development Certificate. That advice concluded that there was no scope to revoke the Lawful Development Certificate. This was based on the view that, even if the existing building had had a mono-pitched roof as indicated on the plans, the increase in volume would have been 56.72 cubic metres, which is above the level allowed under permitted development. In effect, the decision to issue a Lawful development Certificate was due to an error by the Council, rather than any misleading information provided by the developer (see paragraph 4).
18. The Council's Chief Executive replied to Mrs Harding on 19 July 2007. He said the Council was not in a position to do any more than it had already done to seek reductions in the scale of the development. He apologised for the Council's error in issuing the Lawful Development Certificate.

### **Mrs Harding's complaint to me**

19. Mrs Harding first complained to me in March 2007. However, as the Council was still dealing with her complaint, my Investigator decided not to pursue an investigation at that stage. Mrs Harding complained to me again in July 2007 after she received the Chief Executive's response to her complaint.
20. When responding to my Investigator's enquiries, the Council confirmed that if formal planning permission had been applied for the development as constructed, it is likely that permission would have been refused. This is because it does not comply with policies in the Council's Unitary Development Plan which require new developments to respect the existing property, and dormer windows to be set clearly within the roof profile of the existing structure and not take up the whole width or height of the roof.
21. The Council was invited to consider what compensation might be appropriate to remedy the injustice caused to Mrs Harding by its handling of the Lawful Development Certificate. Other than apologising to Mrs Harding, the Council made no suggestions for remedying the injustice to her.
22. Mrs Harding has recently suggested that the increase in volume on the basis that the property originally had a mono-pitched roof (see paragraph 17) is just within the threshold for permitted development. If that were the case it might raise the possibility of revoking the Lawful Development Certificate. The Council has considered Mrs Harding's claim. It has amended the figure to 56.50 cubic metres but remains satisfied that it is above the level allowed under permitted development.

23. The Council says it has employed a consultant to undertake a review of its current procedures. It says this process will result in additional training, including on the interpretation of the Town & Country Planning (General Permitted Development) Order 1995. The Council also says its Development Services are being restructured to enable greater mentoring and training of officers.

## **Conclusion**

24. The Council failed to recognise that the proposed extension exceeded the threshold for permitted development, whether or not there was a mono-pitched roof, and so I can see no reason to question its view that there is no scope to revoke the Lawful Development Certificate.
25. Although the Council accepted that it had been at fault when responding to Mrs Harding's complaint, other than apologising, it made no proposal for remedying the injustice caused to her. Had it done so, it may have been able to avoid the need for her to complain to me again. Nor did the Council offer a remedy when responding to my Investigator's enquiries.
26. As a result of the Council's failings, which amount to maladministration, Mrs Harding will have to live next door to an extension which is significantly larger than would have been the case if her neighbour's property had been extended within the parameters of permitted development. The extension is particularly imposing when viewed from Mrs Harding's home. It is worth noting that the reductions which the Council agreed with her neighbour have had little impact on the development when viewed from her property.
27. In order to remedy the injustice caused to Mrs Harding as a result of the failings I have identified, the Council should:
- (a) pay compensation to her based on the District Valuer's view of the difference between the value of her home, given the way her neighbour's property has been developed, and the value it might have had if her neighbour's property had been extended within the parameters of permitted development; and
  - (b) pay her £500 to reflect the time and trouble involved in pursuing her complaint.

28. The Council should ensure that, as part of its current review of its Development Services, it considers what action to take to improve procedures and train officers, with a view to ensuring that Lawful Development Certificates are not erroneously issued in future.

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**6 December 2007**