



Section H

# Land

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# H1: Lease of premises

## Council premises – licence application – lease initially agreed but later denied

Mr Endell complained that the council acted unfairly, greatly to his financial cost, when it decided that it would not grant him a lease which it had agreed in principle to grant some 17 months earlier.

### What happened

1. The premises concerned comprised a former restaurant situated in a parade of old buildings in an area which was predominantly commercial. The premises were boarded up and were proving difficult to let.
2. Mr Endell sought to lease the premises from the council and indicated that he would use the premises as a licensed restaurant with cabaret comprising exotic dancing and live strip shows. The council's land sub-committee agreed to grant him a lease subject to his being able to obtain appropriate public entertainment and liquor licences. That was in September 1998. In January 1999 a draft lease was sent to him.
3. Opposition to the proposal then built up. In April 1999 the council's licensing sub-committee refused to grant the licences. Mr Endell appealed to the magistrates' court and won his appeal. The council then appealed against the magistrates' decision and lost.
4. In February 2000 the land sub-committee reconsidered the matter and withdrew its offer to grant Mr Endell a lease for the premises.

### The Ombudsman's view

5. The Ombudsman recognised that the activities proposed by Mr Endell might be distasteful to large numbers of people. But the activities were lawful and

Mr Endell was entitled to have his application to the council for a lease considered properly.

6. The Ombudsman considered that the proposals by Mr Endell were perfectly clear at the outset. The application for the lease referred to exotic dancing and live strip shows. The council argued that the term 'exotic dancing' was misleading and what was meant was table dancing. The Ombudsman said that, even if that was so, the inclusion of the reference to live strip shows should have put the matter beyond doubt.
7. This was always likely to be a contentious issue and the Ombudsman said that should have been recognised by the land sub-committee. The committee chairman took the view that it would have been better had the sub-committee consulted more widely before agreeing to grant Mr Endell's lease. The Ombudsman shared that view and said that, given the obvious sensitivity and the eminently foreseeable public outcry, it was maladministration for the land sub-committee not to take more time at the beginning to take legal advice and seek the views of the licensing committee.
8. The council was justified, the Ombudsman said, in taking full account of the views of residents living close to the premises. She would have had no difficulty in accepting that public outrage would constitute a good reason for the council not to have granted Mr Endell a lease. But if that was the case in February 2000 it was also the case in September 1998, and it was disingenuous of the council to argue that it only discovered the strength of public feeling at the later date. The council allowed Mr Endell to pursue the issue of the public entertainment licence through

the courts, and only when he had won his case did the council tell him he could not have the lease.

9. The Ombudsman said the council was not entitled to mislead Mr Endell by firstly agreeing to grant him a lease and then, some 17 months later, refusing his application on grounds that were available to it on the first occasion. If the council wished to deny Mr Endell the lease on principle it ought to have done so at the outset. In February 2000, the council ought to have either granted him the lease or offered him compensation for his abortive costs reasonably incurred in relying on the council's agreement in principle to grant him the lease.

10. The Ombudsman recommended that the council should now do one or the other. In any event and in addition, she recommended that the council should pay Mr Endell £2,500 for the unnecessary time and trouble to which he had been put.

*(Report 00/C/4247)*

## H2: Purchase

### Council's intention not known – public open space

Mr Gladstone complained that a council failed to put appropriate measures in place to advise prospective purchasers that it intended to adopt several areas of land on a new development as public open spaces.

#### What happened

1. Mr Gladstone purchased a new house on a residential development. He also purchased an adjoining large plot of land. He did not know that the council intended that part of that land was to be adopted as public open space. There was no formal legal agreement to that effect and neither were any planning conditions attached to the planning consent.
2. Mr Gladstone said that neither he, his solicitor, nor the developers' sales agents were aware of the council's intentions.
3. Before the purchase, Mr Gladstone made enquiries of the council about whether planning permission would be needed to erect fencing round the plot of land. He was told it was unlikely that planning permission would be needed and that the position would be confirmed in writing. Despite telephone reminders from Mr Gladstone, that was not done.
4. Almost two months later Mr Gladstone received a telephone call from the council telling him that the additional plot of land was intended as public open space and so he would not be able to purchase it. By that time he had already exchanged contracts for the purchase. It was not until a further two months had passed that the council confirmed its advice in writing.

#### The Ombudsman's view

5. The Ombudsman found that the council's failure to ensure that its intentions were capable of implementation by means of a legal agreement or planning conditions was maladministration. He also concluded that the council's failure to advise Mr Gladstone of its definitive view of the future of the land in question amounted to maladministration.

#### Outcome

6. The Ombudsman recognised that the council had invested a great deal of time and effort in seeking a resolution of the problem. This resulted in the land being purchased from Mr Gladstone and the council paying all his legal costs.
7. The council accepted the Ombudsman's suggestion that it should make an *ex gratia* payment of £750 to Mr Gladstone in recognition of the unnecessary inconvenience and anxiety he suffered.

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