



Northern Ireland  
**Public Services**  
Ombudsman

# Investigation Report

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## Investigation of a complaint against Armagh Banbridge and Craigavon Borough Council

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**NIPSO Reference: 202002188**

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## **The Role of the Ombudsman**

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

## **Reporting in the Public Interest**

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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**Case Reference: 202002188**

**Listed Authority: Armagh Banbridge and Craigavon Borough Council**

## **SUMMARY**

This complaint was about the actions of the Armagh, Banbridge, and Craigavon Borough Council (the Council). The complainant raised concerns about the Council's decision not to take enforcement action against a structure with a veranda erected in her neighbour's garden. The investigation considered the process the Council followed leading to its decision.

The investigation examined the details of the complaint, the Council's response to enquiries, and relevant legislation and guidance. I upheld the complaint. The investigation identified maladministration regarding the Council's failure to follow its internal guidance when making its decision not to pursue enforcement action. It also identified that the Council did not provide full and accurate reasons for its decision. The investigation found this led to the complainant experiencing uncertainty, frustration and time and trouble in pursuing her complaint. While the investigation identified maladministration, I am satisfied the Council would not have reached a different decision had these failures not occurred. Therefore, the investigation did not identify any grounds on which it could question the merits of the Council's discretionary decision not to take enforcement action.

I recommended that the Council apologise to the complainant. I also recommended it delivers training to relevant staff to prevent the failures recurring. The Council accepted my recommendations.

## THE COMPLAINT

1. I received a complaint about the actions of the Armagh, Banbridge, and Craigavon Borough Council (the Council). The complainant raised concerns about the Council's decision not to take enforcement action against a structure with a veranda erected in her neighbour's garden.

### Background

2. The complainant explained her neighbour erected a log cabin type structure with a veranda in their garden. She said the neighbour did not have planning permission for the structure. The complainant was concerned that persons on the veranda had a clear view into her garden, resulting in a loss of privacy. She raised her concerns with the Council and asked that her neighbour lower the veranda.
3. The Council visited the site on 4 March 2021 and concluded the structure breached some aspects of '*permitted development*' rules. Therefore, it was an unauthorised development. However, the Council decided it was '*not expedient*' to pursue enforcement action.
3. The complainant objected to this decision. The Council inspected the site again on 10 May 2021. It reiterated its decision not to take enforcement action in its letter to the complainant on 26 May 2021.
4. The complainant submitted a complaint to the Council on 2 June 2021. The Council issued its Stage 3 response to the complaint on 2 September 2021. The Council did not uphold the complaint.

### Issue of complaint

6. I accepted the following issue of complaint for investigation:  
**Whether the Council managed the enforcement investigation process appropriately and in accordance with relevant guidelines.**

## INVESTIGATION METHODOLOGY

7. In order to investigate this complaint, the Investigating Officer obtained from the Council all relevant documentation together with its comments on the issue the

complainant raised. This documentation included information relating to the Council's complaints process.

### **Relevant Standards and Guidance**

8. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those specific to the circumstances of the case. I also refer to relevant regulatory, professional, and statutory guidance.
9. The general standards are the Ombudsman's Principles<sup>1</sup>:
  - The Principles of Good Administration
  - The Principles of Good Complaints Handling
10. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.
11. The specific standards and guidance relevant to this complaint are:
  - The Planning Act (Northern Ireland) 2011 (the 2011 Act);
  - The Planning (General Permitted Development) Order (Northern Ireland) 2015, (the 2015 Order);
  - The Department for Infrastructure's Creating Places: Achieving Quality in Residential Environments, updated October 2019 (Dfi's Guidance);
  - The Department for Infrastructure's Enforcement Practice Note (1/2016) Introduction to Planning Enforcement Practice Note, October 2016 (Dfi's Enforcement Practice Note);
  - Armagh, Banbridge, and Craigavon Council's Planning Enforcement Strategy, not dated (the Council's Planning Enforcement Strategy); and
  - Armagh, Banbridge, and Craigavon Council's Enforcement Practice Note 03 Investigative Approaches, October 2016 (the Council's Enforcement Investigation guidance).

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<sup>1</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

12. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the Council. It is not my role to question the merits of a discretionary decision unless my investigation identifies maladministration in the process of the Council making that decision.
13. I did not include all information obtained during the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.
14. A draft copy of this report was shared with the complainant and the Council for comment on factual accuracy and the reasonableness of the findings and recommendations. The Council accepted the findings and recommendations outlined within the report. I also carefully considered the complainant's comments. However, my findings remained unchanged.

## **THE INVESTIGATION**

### **Whether the Council managed the enforcement investigation process appropriately and in accordance with relevant guidelines.**

#### **Detail of Complaint**

15. This complaint relates to the process the Council followed that led to its decision not to take enforcement action. The complainant was particularly concerned that the veranda overlooked her garden, resulting in a loss of privacy.

#### **Evidence Considered**

##### **Legislation/Policies/Guidance**

16. I considered the following legislation and guidance as part of investigation enquiries:
  - The 2011 Act;
  - The 2015 Order;
  - Dfl's Guidance;
  - Dfl's Enforcement Practice Note;
  - The Council's Planning Enforcement Strategy; and
  - The Council's Enforcement Investigation guidance.

### **The Council's response to investigation enquiries**

17. The Council said the structure in question was not a '*permitted development*'. It explained the structure had a veranda and therefore failed to meet D1(f) of the 2015 Order. It also explained that the flue attached to the structure did not meet Class H(a) of the 2015 Order as it exceeded the roof by over one metre. The Council said that following investigations, it decided not to pursue enforcement action.
18. The Council said it referred to the DfI's Guidance when it made its decision. It explained the guidance states that a separation distance greater than 20 metres between the opposing rear first floor windows of dwellings is '*generally acceptable to minimise such impacts*'. The Council said the guidance also states that a minimum of 10 metres to the common boundary is '*generally acceptable to minimise such impacts*'. Furthermore, the guidance states that generally, a smaller separation distance is also acceptable for a single-storey development. The Council said it measured the separation distance on an aerial map. It explained there is a 67 metre distance to the complainant's property (and 50 metres to the common boundary).
19. In relation to the slope, the Council said these are areas where the Officer can '*gauge an opinion on without exact measurements*'. The Council explained that when a site is not level, it considers requesting an enhanced separation distance. However, guidance does not stipulate what that enhanced separation distance should be. It further explained that these can vary in every case. The Council said that in this instance, the separation distance was '*well over twice the recommended distances*'.
20. The Council explained the dwellings to the rear sit at a higher level. It said the enforcement report '*acknowledges the difference in levels*'. The Council explained that following consideration of the separation distances between the veranda and the complainant's property, it '*did not consider it expedient to pursue*'.
21. The Council explained its enforcement investigation considered the complainant's loss of privacy. It referred to the enforcement report, which



documents, *'However this does not impact on anyone due to the siting of the building – the dwellings to the rear sit at a higher level and the complainant is 67m away'*. The Council explained the report also documented, *'the veranda does not cause any unacceptable impacts and therefore the matter is not expedient to pursue'*. It said the Council took the view that the complainant's privacy was not impacted due to the separation distances involved.

22. The Council said it also considered screening during its investigation. This was in relation to its effect on the reduction in privacy of the complainant's garden from standing on her neighbour's veranda. The Council explained that while the enforcement report does not refer to screening, it informed the complainant that it considered it in its letter dated 26 May 2021.
23. The Council explained it did not measure the height of the steps up to the veranda floor level or the flue attached to the structure. In relation to the flue, the Council said the enforcement report documents that in the Officer's opinion, it was *'just marginally over'*. Therefore, it considered there was *'no detrimental impact on neighbouring properties'*.
24. The Council said the 2011 Act provides it discretionary powers to take enforcement action *'when it considers it expedient to do so'*. It explained that in doing so, it had *'regard to the provisions of the local development plan and any other material considerations'*. The Council said that in exercising discretion, it considered the *'extent of the breach and its potential impact on the environment'*. It further explained that it referred to *'case law, precedents and appeal decisions'*. The Council said that in this case, it *'fully considered'* the potential impact on the complainant and determined it was *'not expedient to pursue'*.

## **Interviews**

25. The Investigating Officer met with representatives from the Council to discuss the case and its response to enquiries. The points discussed are summarised as:

- The Council explained it considered the elevation of the slope of the complainant's garden. However, the Officer dismissed it as it was not material to the case.
- The Council explained the Officer noted but did not record the height of the steps and the flue.
- The Council provided photographs taken from the neighbour's garden. These showed that foliage blocked the sightline from the veranda to the complainant's garden.

### **Relevant Council Records**

26. A summary of the relevant records is enclosed at Appendix three to this report.

### **The complainant's response to the draft report**

27. The complainant disputes that the foliage blocked the sightline from the veranda to her garden. She explained the veranda continues to have an impact on her privacy because of people sitting or standing on the veranda. The complainant explained that she can no longer enjoy her garden.

### **The Council's response to the draft report**

28. The Council explained that it completed a thorough investigation of each of the complainant's concerns. It said it completed site visits and compiled reports. The Council accepted my recommendations.

### **Analysis and Findings**

29. Having considered the Council's records, it is clear the structure with a veranda was not a permitted development. However, the Council decided not to pursue enforcement action against the structure. The 2011 Act permits the Council to make a discretionary decision not to pursue enforcement action if not expedient to do so. This investigation did not seek to challenge the Council's discretionary decision. However, it did consider if in undertaking the process leading to its decision, the Council acted in accordance with legislation, guidance, and relevant standards.

30. In its response to investigation enquiries, the Council explained that in making its decision not to take enforcement action, it relied on the DfI's Guidance. This

guidance states that *'good practice'* indicates a separation distance of 20 metres or more. The Council explained that its enforcement report documents that the veranda *'does not impact anyone'* as the *'complainant is 67m away'*. While I accept the report refers to the separation distance, it does not base its conclusion on the Dfl Guidance. Therefore, I consider it does not fully explain why 67 metres is an acceptable distance, or the basis for its conclusion that this distance had no impact on the complainant's privacy.

31. The Dfl's 'Creating Places' guidance goes on to state that *'an enhanced separation distance may also be necessary for development on sloping sites'*. However, the enforcement report does not document the gradient of the slope. The Council explained it did not measure the gradient and that officers can *'gauge an opinion on [it] without exact measurements'*. It also said that while it considered the slope, it dismissed it as it had no bearing on the case.
32. The Council explained the report refers to the slope as it states, *'the dwellings to the rear sit at a higher level and the complainant is 67 m away'* [my emphasis]. Furthermore, in its response to investigation enquiries, it explained the separation distance was *'well over twice the recommended distances'*, which it documented in the enforcement report. I again accept that the report refers to the *'higher level'* and 67 metre difference. However, I do not consider it explains it was *'well over twice'* that recommended in the Dfl's Guidance. Therefore, I do not consider the report outlines its justification for its conclusion that it was a sufficient *'enhanced separation distance'* based on guidance.
33. The Council's Enforcement Investigation guidance states that the *'enforcement officer should compile a comprehensive report which covers all the salient facts and issues'*. Furthermore, it states that the report should include *'...other material considerations; assessment of the case; and, recommendation and reasoning'*. In relation to the separation distance element, I do not consider the Council provided all *'salient facts and issues'* or all *'material considerations'* in its report. Additionally, I do not consider the Council documented full or complete reasons for its decision not to take action in its enforcement report for the reasons outlined above. In failing to do so, I consider the Council did not act in accordance with its Enforcement Investigation Guidance.

34. The Council explained that in making its decision not to pursue enforcement action, it also considered the impact screening had on the complainant's privacy. It provided photographs as evidence that foliage blocks the view from the veranda to the complainant's garden. However, I note the enforcement report does not refer to screening.
35. I again refer to the Council's Enforcement Investigation Guidance. I consider that the impact the screening had on the complainant's privacy was an integral part of the investigation. Therefore, it should have included it in the enforcement report as it was '*a salient...issue*', a '*material consideration*', and sufficient reason for not taking enforcement action. In failing to do so, I consider the Council did not act in accordance with its guidance. I note that in its letter to the complainant on 26 May 2021, the Council listed screening as a reason for its decision. Therefore, I am satisfied the complainant was aware after this date that the Council considered it in its deliberations.
36. The Council referred to the flue attached to the neighbour's structure. It explained that the height of the flue breached Class H(a) of the 2015 Order. I also referred to Class I(a) of the 2015 Order, which states that a development is not permitted if '*any part of the deck or other raised platform would exceed 0.3 metres above ground level*'. However, the Council explained that while it '*noted*' these heights, it did not measure or record them.
37. The Council's Enforcement Strategy states it will investigate all alleged breaches of planning control and lists its priorities for the process. One of these priorities is for the Council to '*take the appropriate and proportionate form of action following a proper investigation*' [my emphasis]. I consider the heights of the flue and the raised platform (veranda) were key to the decision of whether it was expedient to pursue enforcement action. Therefore, I would have expected the Council to consider them '*salient facts*' and for it to record this information '*appropriately*' in accordance with its Enforcement Investigation guidance. Furthermore, while the enforcement report refers to the height of the flue, it does not refer to the height of the raised platform. Therefore, I cannot be satisfied that the Council considered this issue and undertook a '*proper*

*investigation*'. In failing to do so, I consider the Council did not act in accordance with its Enforcement Strategy and Enforcement Investigation guidance.

38. In its response to this office, the Council said it '*noted*' some of its deliberations but did not include them in its report. It is important for bodies to document all facts relating to an investigation, including those it dismisses, as these can contribute to the rationale for the decision taken. I consider the recording of the rationale for decisions a key tenet of good administration and a 'shield' for a public body to defend its actions when challenged. More importantly, the complainant said her concerns particularly related to the structure's veranda, which she felt impacted her privacy. Therefore, I consider it was important for the Council to provide full and accurate reasons why it did not consider it expedient to take enforcement action in this case. I do not consider it did so on this occasion.
39. I was pleased to note that the Council listed reasons for its decision in its correspondence with the complainant between May and July 2021. However, I consider the Council could have provided further rationale in its letter, including reference to the relevant guidance on which it based its decision. Furthermore, I note the correspondence did not refer to the heights of the flue or veranda, which I consider integral to the Council's decision.
40. The First Principle of Good Administration requires bodies to act in accordance with their own procedural guidance. The Third Principle of Good Administration requires bodies to provide information that is clear, accurate, and complete. It also requires them to state their criteria for decision making and give reasons for their decisions. For the reasons outlined, I consider the Council failed to meet these principles. I am satisfied this constitutes maladministration and I uphold this complaint.
41. While I have identified maladministration, I have not identified any grounds on which I could question the merits of the Council's discretionary decision not to take enforcement action. I acknowledge the complainant's concern that the view from the veranda of the log cabin continues to impact on her privacy.

However, I am satisfied that the Council would not have reached a different decision had these failures not occurred. Nevertheless, I consider the complainant sustained an injustice, not as a result of the decision regarding enforcement action, but because of the doubt it created about the process. I am satisfied that in this case, the complainant experienced uncertainty, frustration and time and trouble in pursuing her complaint.

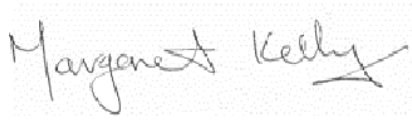
## **CONCLUSION**

41. The complainant raised concerns about the Council's decision not to take enforcement action against a structure erected in her neighbour's garden. The investigation considered the process the Council followed leading to its decision.
42. The investigation identified that the Council failed to follow its internal guidance when making its decision not to pursue enforcement action. It also identified that the Council did not provide full and accurate reasons for its decision. I consider this constitutes maladministration and I uphold the complaint. I consider this led to the complainant experiencing uncertainty, frustration and time and trouble in pursuing her complaint.

## **Recommendations**

43. I recommend that within **one month** of the date of this report, the Council provides the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2019), for the injustice caused to her as a result of the maladministration identified.
44. I further recommend that the Council provides training to relevant staff. This training should focus on the importance of documenting all facts obtained during an enforcement investigation, and of recording full and accurate reasons for all decisions it makes. The Council should provide evidence it delivered this training within **three months** of the date of this report. In making this recommendation, I refer the Council to the publication 'Records Matter' (a joint publication by the Public Services Ombudsman, the NI Audit Office and the Information Commissioner's Office, January 2020.)

45. I am pleased to note that the Council accepted my recommendations.

A handwritten signature in black ink that reads "Margaret Kelly". The signature is written in a cursive style with a horizontal line under the "y".

**MARGARET KELLY**  
Ombudsman

**30 March 2023**

## PRINCIPLES OF GOOD ADMINISTRATION

**Good administration by public service providers means:**

### **1. Getting it right**

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

### **2. Being customer focused**

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

### **3. Being open and accountable**

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

### **4. Acting fairly and proportionately**



- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

#### **5. Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

#### **6. Seeking continuous improvement**

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

## PRINCIPLES OF GOOD COMPLAINT HANDLING

### Good complaint handling by public bodies means:

#### Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

#### Being customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

#### Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.

- Keeping full and accurate records.

### **Acting fairly and proportionately**

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

### **Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

### **Seeking continuous improvement**

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.