

The Ombudsman's final decision

Summary: The Council delayed in dealing with a request for a lease and was at fault for failing to tell the applicant the area would be regenerated within 12 months.

The complaint

1. Mr X complains the Council delayed in responding to his enquiries about leasing commercial premises and failed to tell him the area was subject to regeneration restricting the length of any lease.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)

How I considered this complaint

4. As part of the investigation, I have:
 - considered the complaint and the documents provided by the complainant;
 - made enquiries of the Council and considered the comments and documents the Council provided;
 - discussed the issues with the complainant;
 - sent my provisional view to both the Council and the complainant and invited their comments.

What I found

5. Mr X contacted the Council in June 2013 about leasing a vacant unit to start a business in. He met a council officer at the site. Mr X was keen to move his project forward but heard nothing from the Council.
6. Mr X says he contacted the Council regularly about the potential lease. He says each time the Council promised to send him the lease terms shortly but nothing happened. In August Mr X made a formal complaint to the Strategic Director

about the lack of response. The Council responded apologising for the delay and promised to send the draft lease by the end of August.

7. Mr X did not receive the draft lease as promised. He again chased the Council for a response and it sent a draft lease, proposing a three year term, on 11 September.
8. Mr X then entered into a period of negotiation with the Council over the terms of the lease. Agreement could not be reached between Mr X and the Council which resulted in Mr X submitting a formal complaint in November 2013.
9. Mr X continued negotiating with the Council about the lease. In January 2014 the Council advised him the area was to be redeveloped which meant he could only be offered a 12 month lease. Mr X says it is not commercially viable for him to start a business with only a 12 month lease.
10. Dissatisfied with the way the Council has handled this matter, Mr X complained to the Ombudsman.

Analysis

11. Mr X complains the Council delayed in responding to his request to lease a building. The Council accepts it did not respond within its usual timescales. It says there are no specific or statutory timescales but there was delay in this case due to staff shortages and high caseloads.
12. I am satisfied there was fault by the Council. It delayed in responding to Mr X's enquiry. The way it handled the matter caused frustration for Mr X as the Council failed to give realistic timescales for the matter to be concluded. Even after Mr X made a formal complaint, the Council failed to meet the promised timescale.
13. Mr X also complains the Council failed to tell him the area was subject to regeneration and that this would restrict the length of any lease. Mr X says that if he knew this at the outset he would not have continued to negotiate as it is not commercially viable for him to set up a new business with only a 12 month lease.
14. The Council says the masterplan for regeneration was adopted in 2010 following public consultation. In September 2013 a funding bid was being processed. The Council says that in January 2014 the timescale for the proposed redevelopment highlighted the need for any lease to be short term. It says all longer term leases include a break clause. The Council feels Mr X would have been aware that the area was subject to regeneration.
15. I am not persuaded the Council fully discussed this issue with Mr X. The initial lease proposed in September 2013 was for three years. At that time the Council was applying for funding for the works. I consider the Council should have told Mr X the area was subject to a regeneration plan at the outset. I do not know for certain if this would have changed how Mr X proceeded but with the full information Mr X may have decided at an earlier date not to pursue the matter further.
16. Mr X argues the faults by the Council resulted in loss of business. I cannot agree he is affected in this way. Mr X could not agree lease terms with the Council after it sent the draft lease in September 2013. Negotiations on the terms of a lease are a normal part of the process. The delay in starting the business was due to Mr X not agreeing to the terms offered and so cannot be considered the fault of the Council.

Agreed action

17. The faults by the Council in this case caused Mr X avoidable frustration and put him to extra time and trouble to pursue the issue. The Council agrees to pay Mr X £150 to acknowledge this.

Final decision

18. As the Council agrees to the proposal in paragraph 17 above, I will not pursue the complaint further.

Investigator's decision on behalf of the Ombudsman