

# Report by the Local Government Ombudsman

**Investigation into a complaint against  
London Borough of Hackney  
(reference number: 14 006 093)**

**10 May 2016**

## The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

# Investigation into complaint number 14 006 093 against London Borough of Hackney

## Contents

Report summary.....	1
Introduction .....	2
Legal and administrative background .....	2
How we considered this complaint.....	4
Investigation .....	4
Conclusions.....	10
Decision .....	13
Recommendations .....	13

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

## Key to names used

Mr Z	the complainant
Officer A	The Council's former Development Manager
Officer B	The Council's former Senior Enforcement Officer
Officer C	The Council's Development Control and Enforcement Manager
Officer D	The Council's Enforcement Team Leader

## Report summary

### Planning and Development

Mr Z complains the Council has not taken direct action to remove an unauthorised extension built by his neighbour in 2006 and subject to an enforcement notice issued in February 2009.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

To remedy the injustice caused the Council should:

- apologise to Mr Z for the fault causing injustice identified in this report;
- pay Mr Z £2500 in recognition of his injustice (£500 for his uncertainty and time and trouble and a further £2000 to reflect the impact of the unauthorised development);
- agree to provide as a minimum monthly updates to Mr Z (copied to this office) on the progress of its direct action to remove the unauthorised development (or such other action it might take in respect of that unauthorised development) until it has been removed;
- complete the draft of its enforcement strategy and include reference in there to keeping in touch with those who report breaches of planning control (basic good administrative practice would be for the Council to keep in touch monthly or as it should specify on a case-by-case basis);
- introduce a procedure for cases where direct action is appropriate to remedy breaches of planning control; this should include setting out the circumstances where such action is considered appropriate as well as process advice for officers on commissioning contractors; authorising expenditure and so on;
- ensure this report is considered as part of the Council's future budgetary planning for its enforcement service; the Council will consider what staffing level needs to be maintained in the future to prevent another backlog of cases recurring.

The Council has agreed to carry out these recommendations within one month of the date of this report.

## Introduction

1. Mr Z complains the Council has not taken direct action to remove an unauthorised extension built by his neighbour in 2006, which is subject to an enforcement notice issued in March 2009. He also complains that it has failed to keep him informed of action it has taken or proposed to take to remove the unauthorised extension.
2. Mr Z says that as a result he has been put to excessive time and trouble pursuing his complaints about this matter with the Council and had to suffer the consequences of living next to the unauthorised development for longer than should have been the case. He says he cannot proceed with planned changes to his own property as that would involve building on to the unauthorised extension. He also notes the unauthorised extension gives his neighbour access to a first floor roof used as a balcony area and which overlooks Mr Z's home giving direct views into his bedrooms and garden. Mr Z considers the unauthorised extension therefore causes him a loss of privacy. He also considers the extension blights the street due to its size and appearance.

## Legal and administrative background

### The Ombudsman's Powers

3. The Ombudsman cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to the Ombudsman about something a council has done. (**Local Government Act 1974, sections 26B and 34D**)
4. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (**Local Government Act 1974, sections 26(1) and 26A(1)**)

### Council powers to take enforcement action

5. The Council has discretion to take enforcement action. Where it appears there is a breach of planning control, the Council may issue an enforcement notice. (**The Town and Country Planning Act 1990, section 172(1)**)
6. The Council must set out in an enforcement notice what constitutes the breach of planning control. It must also set out what steps the developer must take to remedy the breach. (**DETR Circular 10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements**)
7. The Council can prosecute for a failure to comply with an enforcement notice. (**The Town and Country Planning Act 1990, section 179**). Action is taken in the Magistrate's Court but the defendant can choose to defend the action in the Crown Court. Successful prosecution can lead to the defendant being fined but it does not ensure compliance with the notice.

8. The Council also has the power to take direct action to secure compliance with an enforcement notice. The Council can use reasonable force to enter land and carry out works. The developer contravening the notice is liable to pay the Council's costs for taking such action. The Council can also secure its costs by placing a charge on the property or land to which the enforcement notice relates. (*The Town and Country Planning Act 1990, Section 178*)
9. The Council also has the power to ask the High Court or County Court for an injunction to prevent an ongoing breach of planning control; for example to prevent the ongoing contravention of an enforcement notice (*The Town and Country Planning Act 1990, Section 187b*). Government advice is that before seeking an injunction the Council should consider the personal circumstances of the contravener and whether an injunction is proportionate. The guidance states an injunction is *"the most serious enforcement action that a local planning authority can take because if a person fails to comply with an injunction they can be committed to prison for contempt of court"*. Consequently it says Councils should only use injunctions as a *"last resort"*. (*Government Planning Practice Guidance; Ensuring effective enforcement, March 2014*)
10. The Council can also issue stop notices which are designed to immediately halt ongoing unauthorised building works. It is a criminal offence to contravene such a notice. (*Town and Country Planning Act 1990, Section 171*)
11. From 1 April 2012 Government guidance said councils should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. (*National Planning Policy Framework, paragraph 207*)

### **Hackney Council policy and performance on enforcement**

12. The Council has an Enforcement Policy which pre-dates the Government guidance referred to in paragraph 11 above and was drafted around 2007. This says the Council is *"firmly committed to protecting the environment from unauthorised and harmful development, preserving public amenity and improving people's surroundings"*. The document says that where it is unable to secure *"voluntary compliance"* to prevent an unacceptable breach of planning controls, it will consider serving an enforcement notice. The Council says that it will treat breaches of enforcement notices as the highest priority. It will consider prosecuting for failure to comply with such notices (although the document also makes reference to other options available to the Council to enforce against breaches of planning control as referred to above including direct action, injunctions and stop notices). The policy does not place any expectations on officers to keep in touch with those reporting breaches of planning controls.
13. The Council is currently drafting a local enforcement plan to replace the existing enforcement policy. It is also drafting a procedure for officers when they are considering authorising direct action to remedy a breach of planning controls.
14. The Council delegates all responsibility for planning enforcement to officers. Elected members who serve on the Council's Planning Committee are therefore not involved in decisions on planning enforcement cases. A monthly report is issued by the Council's

Planning Service which includes statistical data on enforcement cases and is copied to the Cabinet member with responsibility for the service. The report includes brief commentary on selected enforcement cases; for example where the Council receives an appeal against an enforcement notice or has begun a prosecution.

15. The November 2015 monthly report stated that the Council had 1469 open enforcement cases. It also showed that between the first quarter of 2014 and third quarter of 2015 the number of open cases had fluctuated between 1450 and 1590.
16. In December 2006 we issued a report on three complaints heavily criticising the Council's failure to take enforcement action over several years (*case reference: 05A12349 and two others*). Each complaint concerned unauthorised development on a neighbouring property and a failure by the Council to take enforcement action for three to four years. The report noted the Council's enforcement service was chronically understaffed and had a backlog of around 1500 cases. The Council said that it had restructured, was doubling its enforcement service and taking steps to tackle the backlog. During the course of this investigation we were told that a specialist backlog team the Council created around the time of this report was later merged into its enforcement service.

## How we considered this complaint

17. This report has been produced following the examination of relevant files and documents and interviews with the complainant and relevant employees of the Council.
18. The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

## Investigation

### Background to enforcement action

19. Mr Z lives in a two storey Victorian terraced property. The property at the centre of his complaint adjoins Mr Z's house. The terrace has 'butterfly roofs' (where two inverted pitched roofs on a terrace meet in the middle).
20. The Council first became aware that Mr Z's neighbour had begun building a roof extension on his property in May 2006. He had no planning permission for this. Over time Mr Z's neighbour has demolished a shared chimney stack and built or partially built a 'mansard' style roof at the front (one with four sloping sides which become steeper halfway down) with a flat roof behind (thereby removing the 'butterfly' roof effect). The roof works also extend to the rear of the property giving Mr Z's neighbour access on to a first floor roof which is used like a balcony. This provides direct views into Mr Z's garden and first floor bedroom windows.
21. While the Council received a planning application from Mr Z's neighbour in early 2007 it could not make a decision on the application due to a lack of information provided. The Council would not validate the application and it was withdrawn. A Planning Officer's

report, written in November 2008 explained this decision and recorded many attempted contacts the Council had made with Mr Z's neighbour encouraging him to submit a valid planning application.

22. The report said the roof extension as built was incompatible with the rest of the terrace. It used different building materials and was incongruous due to its size resulting *"in a development that is intrusive and out of the scale and character of the area"*. The Council therefore considered the extension incompatible with its local planning policies. Senior officers approved a recommendation it serve an enforcement notice in December 2008.

### **The enforcement notice and prosecution**

23. The Council served that enforcement notice in March 2009 which would become effective at the end of April 2009. The notice required Mr Z's neighbour to *"completely remove the unauthorised roof extension"* and *"make good any damage resulting from carrying out the unauthorised works"*. This work was to be completed within three months of the notice taking effect (i.e. at the end of July 2009). The notice also referred to a wooden enclosure at the front of the building, although this was later removed and so is no longer relevant to the complaint.
24. Mr Z's neighbour appealed the enforcement notice to the Planning Inspectorate. In November 2009 the Inspectorate rejected the appeal, except for allowing Mr Z's neighbour an additional three months to comply with the notice. This meant the neighbour had until May 2010 to remove the unauthorised roof extension (where the Inspectorate decides not to uphold an appeal against an enforcement notice the time limit for compliance starts from the date of the appeal decision).
25. Mr Z purchased his home in April 2010, aware of the enforcement notice. He understood that the Council could take action to ensure the notice was complied with and so was not immediately concerned about the impact of the unauthorised extension. He first contacted the Council chasing an update on what action it proposed to take to ensure the extension was taken down in May 2010, when the period for compliance with the enforcement notice was about to expire.
26. In July 2010 Mr Z's neighbour submitted a planning application for a third floor at roof level. The Council refused this in September 2010 as the proposals were largely the same as the unauthorised extension. It considered the planned extension contrary to local planning policies as it was *"incompatible and obtrusive"* for the character of the street due to its *"size, design, materials, position and location"*.
27. Following this refusal of planning permission the Council began a prosecution against Mr Z's neighbour in December 2010. The Council prosecuted Mr Z's neighbour on two grounds. First, for his failure to comply with the planning enforcement notice. Second, for also failing to submit appropriate notifications complying with building regulations. The Council's then Head of Development Control, 'Officer A', told us that the Council always looked to prosecute when enforcement notices were not complied with, in preference to other enforcement options.



28. Both prosecutions were subject to delay due to Mr Z's neighbour being given repeated adjournments by the Courts and due to his non-attendance at more than one hearing. In January 2012 Mr Z's neighbour was found guilty of breaching building regulations. He was fined and ordered to pay costs. The concurrent prosecution for failure to comply with the planning enforcement notice was further delayed by the neighbour requesting transfer of the case to the Crown Court. But in April 2013 Mr Z's neighbour was convicted in the Crown Court for his failure to comply with the enforcement notice. He was further fined and ordered to pay costs.

### **Planning applications made during the enforcement process**

29. While the Council was prosecuting him, Mr Z's neighbour appealed its refusal of planning permission for his roof extension. The appeal was rejected by the Planning Inspectorate in June 2011.
30. In February 2012 Mr Z's neighbour submitted a further planning application for a third floor on his property. The Council considered the plans acceptable as they showed "a traditional size, design and materials for a mansard extension" and "reduced the visual bulk" of the unauthorised extension. The Council therefore approved these plans in April 2012.
31. However, the decision notice took account that the extension as built remained unauthorised. The report placed conditions requiring Mr Z's neighbour to obtain permission for the building materials to be used in the extension. It also imposed a condition to prevent the first floor roof to the rear of the house being used as a balcony that would overlook Mr Z's home. Mr Z's neighbour had three years to comply with these conditions and implement the planning permission. He failed to do this. So the planning permission has now expired.
32. In February 2013 Mr Z's neighbour submitted another planning application for a third floor on his home. This was for a larger extension than approved, similar to that subject to the enforcement notice and refused by the Council in September 2010. The Council refused this application in June 2013 again on the grounds of size and appearance; as well as citing the impact it would have on neighbours as it would "result in a material loss of outlook/increased sense of enclosure to the neighbouring properties".

### **Events after prosecution**

33. In May 2013 Mr Z made a complaint to the Mayor's office at the Council that the Council was not taking action to ensure his neighbour removed the unauthorised extension. The Mayor replied that he would ask the Council's planning committee to consider the case. The Mayor said the Council would consider taking direct action or seek an injunction against Mr Z's neighbour to ensure the extension's removal.
34. There is no record on the Council's planning files of the communications Mr Z had with the Mayor's office. However, after May 2013 Mr Z reports he had several conversations with a senior officer from the Council's enforcement service ('Officer B') and his emails refer to this. In July 2013 the Council resolved to take direct action to remove the unauthorised extension.

35. By October 2013 Mr Z was pressing the Council to take action and copied in his local Councillor to emails chasing a reply. An email from Officer B to Mr Z's local Councillor in November 2013 said there was delay in taking further action due to him becoming *"distracted by the loss of a number of staff members which has impacted on capacity within the team"*.
36. However, in November 2013 the Council commissioned contractors to remove the unauthorised extension. They arrived on site in January 2014 accompanied by Officer B and two police officers. The police advised Mr Z's neighbour not to prevent contractors removing the unauthorised extension. The contractors put up scaffolding and visited the site several times. However, they were unable to progress with the removal of the extension. The Council understands this was because of obstruction from Mr Z's neighbour. However, there are no contemporaneous records on the Council files that show what discussions took place between the Council and contractors (there is only an invoice from the contractors for around £12000).
37. In late February 2014 Mr Z contacted his local Councillor to express frustration that he did not know what was happening with the works to remove the extension and that he had seen no-one on site for two weeks.
38. Mr Z did not hear further from the Council until he alerted it in May 2014 that his neighbour had begun fresh building work on the roof. The Council served a temporary stop notice on Mr Z's neighbour to prevent this. The notice said *"the current unauthorised works are compounding the unacceptability and detriment that the roof extension has on the host property and the street scene"* and were contrary to several local planning policies.
39. Despite this action, Mr Z remained frustrated at the lack of progress to remove the unauthorised extension. He submitted a complaint via the Council's complaint procedure about the slow progress on removal and lack of communications. Officer A replied on behalf of the Council in July 2014. The reply apologised for the delays in undertaking enforcement action and poor communications. It said the Council had been *"let down"* by the contractor taking direct action and frustrated by Mr Z's neighbour. It said the Council would seek an injunction requiring Mr Z's neighbour to carry out the works to comply with the enforcement notice as well as seek alternative contractors to carry out direct action. The Council promised it would regularly update Mr Z on the progress of the work it was taking to ensure removal of the unauthorised extension going forward.
40. In September 2014 Mr Z escalated his complaint. He said *"it is ten weeks since I received the reply to my complaint outlining the plan of action the Council intends to take to resolve the unauthorised building work [...] the action sounded plausible and I was encouraged to believe progress would be made and better communication would be had. However, I am still completely in the dark about any developments or progress [...] my enquiries go unanswered [...]"*.
41. The Council replied to Mr Z's complaint in October 2014. The Council apologised for not keeping Mr Z better informed of its consideration of the unauthorised development. It said it would *"take steps"* to prevent a repeat and promised improved contacts moving forward.

It said that the Council was taking steps to obtain an injunction against Mr Z's neighbour and that it would keep Mr Z informed about that. It offered Mr Z £200 in recognition of the time and trouble he spent pursuing his complaint. In an internal email sent before the Council gave its reply to Mr Z, Officer B said "*to be honest the procurement work is taking longer than expected due to the volume of work in the team and the fact we are understaffed*".

42. When we asked about Officer B's comments, Officer A (who was Development Manager between 2009 and 2015) said the enforcement team faced systemic problems recruiting and retaining staff due to the pressures of work. Officer A told us that Officer B would not normally have had direct casework responsibility, but he became involved in this case due to such shortages. Officer A told us the Council had a dedicated Prosecutions Officer but that post was vacant for much of 2014 which added to other officers' workloads. Officer A also said she could recall only one other time the Council attempted direct action, even though prosecution did not lead to the removal of unauthorised development in all cases. This meant there were other cases in the Borough where serving an enforcement notice and successful prosecution had not stopped the breach of planning control, but no further enforcement action had been taken.
43. The Council says it allocated significant resources to tackling a backlog of cases in 2009. It understood that by March 2012 the backlog of enforcement cases was less than 600 and that Officer A reported there was no backlog by April 2013. The Council says it then allocated further resources in June 2013 to prevent a backlog recurring. However, the Council identifies that some cases were closed in error in this time. In particular it would close a case if officers took action such as serving an enforcement notice or prosecution. But this did not identify cases where enforcement action did not result in the remedy of the breach of planning control.
44. Under the terms of the proposed injunction discussed in late 2014 Mr Z's neighbour would have been expected to remove the unauthorised extension within three months or else face the possibility of imprisonment. In a report accompanying the reply to Mr Z's complaint, the Council also said that it was "*progressing the appointment of an appropriate contractor to undertake the outstanding works*" if the extension was not removed.
45. After receiving the reply to his complaint Mr Z again did not hear further from the Council. He contacted the officer who had investigated his complaint on several occasions between November 2014 and January 2015. In December 2014 he was advised the Council was drafting a further letter to his neighbour in anticipation of an injunction application.
46. However, after this date the Council decided not to proceed with the injunction. It said this was on the basis of legal advice which considered the circumstances of Mr Z's neighbour and which highlighted that the Council should "*explore all possibilities under the Planning Act prior to seeking injunctions*". In April 2015 the Council told us that instead it would therefore make a further attempt at removing the unauthorised extension through direct action using "*specialist contractors*".

47. In April 2015 the Council appointed a new Development and Enforcement Manager, 'Officer C' and an Enforcement Team Leader, 'Officer D'. Officer D reports to Officer C and Officer C reports to the Head of Planning (a new post filled in May 2015). They explained to us that the enforcement team has seven posts and one of these was vacant in September 2015. Each enforcement officer has an active caseload of around 70 cases each; so on current workloads officers cannot significantly reduce the backlog of enforcement cases. Officer C has been responsible for progressing action in this case, which would not usually be part of his day to day role.
48. By May 2015 the Council had obtained initial quotes from contractors for the proposed direct action. However, it was not until December 2015 the Council could instruct contractors. Between these dates the Council told Mr Z they anticipated that direct action to remove the unauthorised extension would begin in late summer or autumn 2015. Both Officer C and Officer D told us they encountered unforeseen difficulties appointing contractors and were hampered by a lack of procedure. In particular, Council Procurement Officers wanted more specific detail before agreeing to any contract. Both officers said they had learnt from this case and the experience would help them to draft a procedure. They had also spoken to other London authorities with more experience of undertaking direct action to help inform their work in this area. Officers C and D told us that they considered direct action failed in January 2014 because the Council did not use a specialist contractor with expertise in this area. They also noted that taking direct action committed the Council to spending thousands of pounds before any sums might be recovered; a process which could take several years. They said the budgetary implications of introducing the policy also needed to be considered.
49. As of today therefore the unauthorised roof extension remains largely the same as constructed when Mr Z purchased his home in 2010; although at the date of publication contractors had moved on site to remove it. Mr Z has told us that he would like to apply for his own planning permission to construct a mansard roof extension in keeping with the Council's planning policies. However, he does not consider he can begin work while the unauthorised works are in place as his building works would adjoin the unauthorised building of his neighbour which should be taken down and some of which encroach on to Mr Z's side of the roof (where the neighbour demolished the chimney stack and has partially erected a replacement). The Council's Building Control Manager comments that he does not consider Mr Z is prevented from building.
50. Officers C and D told us the Council's preference remained to prosecute where enforcement notices were not complied with, but they wanted the Council to be more flexible in considering other options as they recognised that a successful prosecution could not always ensure unauthorised development stopped. Both Officer C and Officer D told us that without more resources the Council could not reduce the backlog of cases in the service as officers could not be expected to take on more work at present.
51. In response to a draft of this report the Council said that it was "*surprised*" to learn it had just under 1500 open enforcement cases in November 2015. It had since allocated two officers to go through all historic open cases to decide what further action should be taken. As of March 2016, the Council has just under 100 planning enforcement cases

under review for the period 2001 to 2006 and a further 400 under review for the period 2007 to 2010. It is not known in how many of these cases a planning enforcement breach continues. It is noted the November 2015 report referred to by the Council included data going back to the first quarter of 2014/15 financial year and was a monthly report produced by officers. The data showed the number of open enforcement cases was 1450 in the first quarter of 2014/15.

## Conclusions

52. Mr Z's complaint involves consideration of the Council's actions over a number of years. He first contacted the Council asking it to take action against the unauthorised development in May 2010 and has contacted it regularly since. We consider Mr Z's first contacts were requesting a service, rather than making a complaint. But at some point Mr Z grew frustrated with the service response and it is at that point it is reasonable to consider his complaint began. We consider this could be best dated to May 2013 after the prosecution of Mr Z's neighbour completed. As this date was more than 12 months before the complaint to us this makes Mr Z's complaint a late complaint.
53. We consider it reasonable to consider the Council's actions from May 2013 despite the passage of time. First, this is because there are enough records for us to come to a view on the complaint. Second, because there has been a continuous chain of events during this time where Mr Z has kept the Council informed of his frustration with the neighbouring development. He has given the Council opportunities to fulfill promises given to him on taking action in response to those contacts. It would not be fair to now penalise Mr Z for not bringing a complaint to us sooner, for allowing the Council these opportunities to take action which might have resolved his complaint.
54. We considered whether we should also investigate the Council's actions from an earlier date. However, we considered it unlikely we could fault the Council for waiting for the outcome of the prosecution of Mr Z's neighbour which concluded in April 2013. As we noted above the prosecution was protracted, but this was for reasons out of the Council's control. We do not consider it would usually be good practice for the Council to take further enforcement action while a prosecution is outstanding. But we have recorded the long history of this case, as it helps emphasise why Mr Z is so frustrated that the unauthorised development remains in place.
55. We noted by April 2013 Mr Z's neighbour had clearly shown a flagrant disregard for following the law over several years and seemed intent on keeping his unauthorised extension despite repeated refusals by the Council to approve it. The Council was also aware that in a minority of cases its policy of prosecution did not lead to unauthorised development being taken down. But there was no suggestion on the Council's planning file that it gave any systematic consideration of what to do next in this case. That was fault.
56. It was understandable therefore that Mr Z should contact the Mayor's office in May 2013. It is noted we found no record of the communications Mr Z had with the Mayor's office on the Council's planning file. It is also noted that Mr Z was told the Council would refer his

concerns to its Planning Committee, when that body has no role in considering planning enforcement matters under the Council's delegated authority arrangements. There were faults therefore in how the Council handled Mr Z's contact at that time.

57. We noted that the Council took the decision to take direct action around July 2013, although it was a further four months before contractors were appointed. This offered false hope to Mr Z. After its contractors arrived on site the records do not show the Council monitored their actions. If it is the case that the contractors withdrew because of interference from Mr Z's neighbour then this begs the question of what the Council did to try and prevent this. There are no records of its planning officers consulting with the contractors, legal officers and the police to try and ensure the direct action completed. There also appears to have been no curiosity at the time to find out why it failed or what lessons could be learned for the future despite the costs to the Council in money and reputation. The Council's failure to monitor the direct action was fault.
58. Thereafter the Council again failed to undertake any further systematic consideration of its options. There is no indication the Council planned to take any further action to address the unauthorised development until Mr Z told it of the further building works in May 2014. Here the Council deserves some credit for acting promptly to serve a temporary stop notice halting the further works on site. However, the Council was still at fault for the drift which preceded this and in not taking action sooner to consider again its options for ensuring the removal of the unauthorised development. That was fault.
59. The Council decided around July 2014 it would attempt a different approach to resolve the matter by seeking an injunction against Mr Z's neighbour. But while this was promised at that time we saw little evidence the Council actively pursued this option until after Mr Z escalated his complaint in September 2014. We recognise the Council did not pursue the injunction on the basis of legal advice, which was consistent with the Government guidance quoted above. But we consider there was unnecessary delay in coming to that conclusion, which was a further fault.
60. We note also that in July 2014 Mr Z was told the Council would consider direct action a second time. But we saw no evidence this was actively pursued until April 2015; by which time the Council had abandoned the attempted injunction. That further delay was fault.
61. In comments on a draft of this report the Council suggests we are being unduly critical and it asked us to take account of the individual circumstances of Mr Z's neighbour. It suggested these had led to the abandonment of direct action in January 2014 and inevitably delayed action on the case. We did not accept this explanation. While the neighbour's personal circumstances were relevant to the decision not to pursue an injunction, there is no indication from the record those circumstances had any other significant impact on any other decision taken in this case. There were no records to explain why the direct action failed in January 2014 so the Council's comments on this appeared speculative. Those circumstances also did not explain the delay after the direct action was abandoned in January 2014, when legal advice on an injunction was not sought for a further nine to ten months.

62. We are sympathetic to the further delays the Council has experienced since April 2015. Like their predecessors the officers working on this case have been hampered by a lack of policy and precedent to cover cases where it needs to take direct action. We understand there are large sums of money involved in taking direct action and contracts will not be straightforward. It is possible the Council could have instructed contractors sooner than December 2015 but we do not think we could say any further delay has been so significant as to justify a further finding of fault.
63. But where Mr Z has been further let down has been with the Council's communications. It has been a recurring feature of this case that time and time again it has been left to Mr Z to chase the Council to find out what is happening. Throughout the duration of this complaint the Council has failed to keep in touch with him to explain its ongoing consideration of the case. This is even after it promised improved communications in response to his complaints made in July and October 2014. He was never told therefore why the direct action failed or when the Council decided not to proceed with the injunction against his neighbour. While there have been signs of improvement in communications during the time we have investigated this complaint, especially over the past six months, we note that Mr Z was still not kept informed of the timetable for beginning direct action which was pushed back over time. The dismal standard of communications in this case must lead to a further finding of fault. We note and welcome that in its comments on the draft report the Council has said that it accepts this criticism "*without hesitation*".
64. We also note that the faults set out above have taken place against a service which appears to be chronically under-resourced. The Council has said that the number of open enforcement cases in November 2015 came as a surprise and we accept that it has identified a flaw in its past practice of closing enforcement cases. But the data available in November 2015 appeared to identify a roughly static number of open cases from the beginning of the previous financial year, suggesting the situation had not arisen overnight or as a result of a sudden change in reporting practices.
65. However, we welcome the steps the Council has explained it is now taking to address its backlog of open cases. We welcome the Council's systematic approach to review its records of enforcement investigations going back to 2001. We welcome the resources the Council has committed to that. This demonstrates a commitment to try and avoid a repeat of the events forming this complaint.

## **Injustice**

66. The faults set out in paragraphs 55 to 63 above have caused injustice to Mr Z. As a direct result of the Council's faults he has been caused frequent uncertainty by not knowing its intentions about how it planned to tackle the unauthorised development. He has been put to unnecessary time and trouble pursuing his complaint.
67. The actions of Mr Z's neighbour have caused Mr Z a loss of amenity and privacy. The unfinished and unauthorised development is also an eyesore for Mr Z and other local residents; out of keeping with the street as the Council has consistently recognised. While we note some disagreement from the Council, we also consider it hampers Mr Z pursuing his plans to develop his own property. While the Council does not bear ultimate

responsibility for these impacts, its lack of timely action to take direct action to remove the unauthorised development has meant he has also lived with these impacts for longer than need have been the case.

## Decision

68. We have completed our investigation. There was fault by the Council causing injustice to Mr Z. The Council has agreed to take the action set out below to remedy that injustice.

## Recommendations

69. To remedy the injustice caused the Council should:
- a. apologise to Mr Z for the fault causing injustice identified in this report;
  - b. pay Mr Z £2500 in recognition of his injustice (£500 for his uncertainty and time and trouble and a further £2000 to reflect the impact of the unauthorised development);
  - c. agree to provide as a minimum monthly updates to Mr Z (copied to this office) on the progress of its direct action to remove the unauthorised development (or such other action it might take in respect of that unauthorised development) until it has been removed;
  - d. complete the draft of its enforcement strategy and include reference in there to keeping in touch with those who report breaches of planning control (basic good administrative practice would be for the Council to keep in touch monthly or as it should specify on a case-by-case basis);
  - e. introduce a procedure for cases where direct action is appropriate to remedy breaches of planning control; this should include setting out the circumstances where such action is considered appropriate as well as process advice for officers on commissioning contractors; authorising expenditure and so on;
  - f. ensure this report is considered as part of the Council's future budgetary planning for its enforcement service; the Council will consider what staffing level needs to be maintained in the future to prevent another backlog of planning enforcement cases recurring.
70. The Council has agreed to carry out these recommendations within one month of the date of this report.