

Case 200503579: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Handling of applications (complaints by applicants)

Overview

Mr C, a solicitor, complained that his client was given inadequate information about the standards required for a property to qualify as a house in multiple occupation.

Specific complaint and conclusion

The complaint which has been investigated is that inadequate information was given about the standards required for a property to qualify as a house in multiple occupation (*partially upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 20 March 2006 Mr C, who is a solicitor, complained that his client (Ms A) was given inadequate information by The City of Edinburgh Council (the Council)'s Department of Environment and Consumer Services when they wrote to her on 15 March 2005 about the standards required at her property in X Street in order to qualify as a house in multiple occupation. In particular, Ms A was unhappy that no reference was made to the property's listed status and that a planning report completed by the Planning and Strategy Department (the Planning Department) as part of an inter-departmental consultation process was not attached with the letter of 15 March 2005.

2. The complaint investigated is that inadequate information was given about the standards required for a property to qualify as a house in multiple occupation.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C, Ms A, and the Council. I have also had sight of extracts of planning reports downloaded from the Council's computerised Joint Inspection Team reports together with a copy of a report presented to the Development Quality Sub-Committee of the Planning Committee on 26 July 2006 (the Sub-Committee Report). The Council have also provided sight of the relevant section of the type of information they said was passed to all those seeking a licence for a house in multiple occupation in about March 2005 and, the information which is now distributed to applicants. On 14 September 2006 I made a written enquiry of the Council and their response was dated 31 October 2006.

4. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The complaint from Mr C which I have investigated is that inadequate information was given about the standards required for a property to qualify as a house in multiple occupation

5. In spring 2005 Ms A applied to the Council for a House in Multiple Occupation licence (an HMO licence) for a flat she owned in X Street,

Edinburgh and the property was inspected on 11 March 2005. On 15 March 2005 a detailed letter was sent to Ms A by an Environmental Health Officer advising of the requirements necessary to be carried out at the property before the licence application could be granted. In general, alternatives were suggested, for instance, 'The flat entrance door must be upgraded to the standard of a self-closing 30 minute fire door. This may be achieved by ... Alternatively this standard can be achieved by the installation of a new fire door fitted with the necessary ironmongery and fire safety additions'. The Council also said, when commenting on a draft of this report, that Mrs A would have received a booklet entitled 'Licence Information' which, under a section headed 'Listed Building Consent' stated, 'Any alterations or extensions of a listed building which will affect its character as a building of special architectural or historical interest will require listed building consent. This listing applies to the whole building and all interior features. If your property is listed, it is important to consider potential alterations required by licensing at an early stage and to discuss proposal (sic) with the Listed Building Team'. Mr C said that, in order to comply with the terms of the licence, Ms A replaced the front door, internal doors and boarded over the fan light.

6. On 31 January 2006 Ms A received correspondence from an Enforcement Officer in the Planning Department saying that as her flat formed part of a category 'B' listed property, any alterations may require listed building consent. He went on to say that unauthorised internal alterations had taken place 'namely the replacement of the internal doors, front door and blocking off the door fanlight' and he requested that the unauthorised alterations be reinstated. He warned that failure to comply would result in formal enforcement action being taken.

7. Ms A spoke with the Enforcement Officer on 3 February 2006 (when it was confirmed that she had been aware of the property's listed status) and this was followed by a letter of 7 February 2006 referring to the alternatives that had been available to Ms A in order to comply with HMO requirements (see paragraph 5). The Enforcement Officer concluded that Ms A had been poorly advised as she had actually gone further than what was required, replacing all internal doors.

8. Ms A remained unhappy with the advice she was being given and engaged Mr C to act on her behalf. He wrote to the Council's Head of Planning and Strategy on 17 March 2006 saying that Ms A had complied with the terms

of the letter sent to her on 15 March 2005 and that if the Council now required her to reinstate works, the Council should bear some of the costs. The Enforcement Officer, who replied on 28 February 2006 maintained the Council's view that reinstatement works were required and that, 'Planning and listed building legislation is separate from that governing the licensing of houses in multiple occupation. Planning is involved in the consultation process for HMO licensing and their response was submitted. It would appear that this response was not contained in the Joint Inspection Team report which your client received.'

9. I have had sight of the planning report concerned and it stated:
'This property is category 'B' listed. Any alteration or extensions which affect the character of the building as a building of special architectural or historical interest will require listed building consent. The listing applies to the whole building and all interior features. It is important that potential alterations required by licensing are discussed with the Listed Building Team (Telephone...)'

10. Mr C said that Ms A did not receive the planning response referred to (paragraphs 8 and 9) and that accordingly his client was given inadequate information about the standards required for the property to comply with the terms of an HMO licence. I pursued this point in particular with the Council and was advised that when the initial letter was sent about the HMO licence (see paragraph 5) the planning report would have normally been provided to Ms A. In this case it was not.

Conclusion

11. It has been confirmed that Ms A did not receive a copy of the planning response referred to above (paragraphs 8 and 9) and this was a failure on the part of the Council. The Planning Department's response emphasised the importance of the property's listed status in relation to any alterations and Ms A was not given the benefit of this information. Although, the Council said that an information booklet would have been sent to Mrs A alerting her to the situation as applied to listed buildings (see paragraph 5).

12. It is clear that Ms A was aware of her flat's listed status and that she chose to make alterations beyond those required for a licence (see paragraph 7). While it is Mr C's view that the Council's failure to provide the planning report led Ms A into the situation where she was being threatened with enforcement

action and the possible cost of reinstatement, I cannot conclude that she acted in total ignorance. In all the circumstances, I partially uphold the complaint to the extent that Mrs A did not receive a copy of the planning response which emphasised the importance of the property's listed status. However, it is important to record that since the events complained of, the Council have updated the information they give to HMO applicants (see paragraph 3) with regard to listed building consent and, that since October 2005, all relevant inspection reports have referred to the need to take account of any listed building consent issues. Furthermore, two new HMO planners took up post in May 2007. Finally, I am aware that the Council ultimately took enforcement action against Ms A but this has not formed part of my investigation given that she had the right of appeal in terms of the appropriate legislation.

Recommendation

In view of the action taken by the Council, the Ombudsman has no recommendations to make.

20 June 2007

Explanation of abbreviations used

Mr C	The complainant
Ms A	The aggrieved
The Council	The City of Edinburgh Council
The Planning Department	The Council's Planning and Strategy Department
The Sub-Committee Report	The Development Quality Sub-Committee of the Planning Committee
An HMO licence	A House in Multiple Occupation licence