

## **The Ombudsman's final decision**

Summary: Miss X complained the Council allowed her mother, Mrs Y's garage to fall into disrepair. Miss X complained the Council did not follow a fair process when deciding to demolish the garage and communication has been poor. We do not find fault with how the Council maintained Mrs Y's garage or made the decision to demolish it. We find the Council at fault for failing to respond to one of Miss X's emails, but we are satisfied it has acted to acknowledge the injustice this has caused.

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## **The complaint**

1. Miss X complains the Council has failed to maintain Mrs Y's garage in line with her agreement and allowed it to fall into disrepair, despite increasing rent and directing funds elsewhere. Miss X also complains about how the Council made the decision to demolish the garage, how it consulted on this, and believes its communication has been poor.

## **The Ombudsman's role and powers**

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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), as amended*)
3. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)
4. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

5. I spoke to Miss X about her complaint and considered information she provided. I also considered information received from the Council.
6. Miss X and the Council had a chance to respond to a draft of this decision, and I considered any comments before making a final decision.

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## What I found

### The Council's Garage Management Policy

7. The Council's Garage Management Policy is published on its website. The policy explains the Council can terminate garage tenancies under certain circumstances, including when the Council requires possession for demolition. It explains that as a garage tenancy is not a dwelling, tenants have no security of tenure and tenancy can be ended by the Council serving a 28 day Notice to Quit.
8. The Council's policy explains the Council will ensure garage stock is kept in a good standard of repair and improved on a programmed basis to ensure they remain in good condition. It goes on to explain if the Council decides to redevelop a garage site it will terminate existing tenancies and provide an alternative garage to rent where possible.
9. The Council also publishes its Garage Strategy 2020-2024 on its website. This explains the Council has three priorities for housing which is impacted by its garage stock:
  - Build more houses, more quickly on under used or derelict land
  - Invest to ensure homes are safe and more energy efficient
  - Prevent homelessness and help people to be financially secure and independent
10. The strategy document explains its purpose is to ensure garages and surrounding land are managed effectively and efficiently, maximising rental income for the Council and providing development opportunities for affordable housing.
11. One of the key considerations set out in the Garage Strategy is to deliver sites for development to enable the Council to use land for housebuilding. The Garage Strategy explains the Council will involve communities in decision making with early consultation and involvement of local residents an essential part of that.

### Garage tenancy agreements

12. The Council's garage tenancy agreements are a legal contract between the Council and its garage tenants. This sets out both the tenant and the Council's obligations. It states the Council will carry out any repairs that are required to the garage but does not specify whether or how frequently it will carry out any modernisations.

### What happened

13. Miss X and Mrs Y are Council tenants. The property they occupy backs onto an area of hardstanding for car parking and some garages, one of which Mrs Y rented on a separate agreement to her social housing.
14. In January 2020, the Council decided to consider the garages for demolition so it could put up new houses. At this time, the Council conducted a parking survey to better understand the needs within the area.
15. The Council has said it stopped including the garages in its modernisation program after it decided to consider them for demolition as it felt this would not be a good use of public money. However, it has said it still undertook repairs reported as needed on any occupied garages.
16. In May 2020 the Council wrote to the garage tenants explaining there were alternative garages available for rent on different sites.

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17. While there was no statutory duty to consult with the garage tenants, in November 2020 the Council sent consultations to garage tenants and local residents to inform them of its plans and seek their views. Responses to the consultation were presented to the Council's Housing Delivery Plan committee to consider how to proceed.
  18. In response to the consultation, Miss X wrote to the Council in December 2020. Miss X explained she objected to the Council demolishing the existing garages and provided 104 points to support her position.
  19. The results of the consultation showed only 20% of respondents supported the Council's proposal. The main objections identified were concerns about the lack of parking, loss of privacy and overshadowing to existing homes, increased noise, population density in the area, damage to local nature, and the potential for increased crime and anti-social behaviour.
  20. Miss X wrote to the Council again on 9 January 2021 reiterating her concerns and providing a further 25 points to consider. Miss X also explained she felt the Council's failure to keep the garages in its modernisation program may have created a bias towards the Council's position.
  21. On 15 March the Council received a request to inspect Mrs Y's garage roof and door, its records show it did this on 30 March.
  22. On 26 March the Council responded to Miss X's letter of December 2020, addressing each of her 104 points.
  23. On 8 April the Council received a request to repair the roof of Mrs Y's garage. Its records show it did this on 19 May.
  24. Miss X responded to the Council further on 26 April to question the Council's response and raise an additional 60 points for consideration. The Council has confirmed it did not respond to Miss X's email of 26 April until several months later but has no explanation for this.
  25. Miss X then called the Council on 6 October to complain about the decision to demolish the garages. Miss X said by explaining garage tenants could apply for garages elsewhere as part of the consultation, she believed the Council had pre-empted the decision. Miss X explained she felt the Council had ignored her and the decision-making process had been unfair with tenants' views not properly considered. Miss X also enquired about where the Council was in terms of the planning process.
  26. The Council responded to Miss X's complaint on 12 November. It explained:
    - It understood that by offering alternative garages it may seem as though a decision had already been made, but that was not the case and it was just offering the opportunity for tenants to explore other options.
    - It believed it had responded to Miss X's email of 26 April, but it apologised if this was not the case and agreed it could not see any evidence of a reply. The Council agreed Miss X had to chase a response and apologised for this being below its usual standards.
    - No planning application had yet been submitted but would be later in the year and residents would have a chance to comment on the application.
    - There is no evidence the consultation was not completed appropriately, and it felt it had addressed Miss X's points in its email of 26 March.

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27. On 30 November the Council wrote to Miss X to provide a response to her email of 26 April.
28. Miss X wrote to the Council again on 17 February 2022. Miss X explained she disagreed with the Council's response to her complaint and asked it to reconsider this. On 22 February Miss X wrote to the Council again to reiterate her complaint points.
29. On 14 April the Council wrote to Miss X to give its final response to her complaint. The Council explained:
- It had provided a comprehensive response to Miss X's complaint on 12 November 2021. It explained it had tried to answer all of Miss X's points but apologised if it had missed anything and invited her to highlight any concerns that remained unanswered.
  - Mrs Y had received two consultation letters – one as she was a resident near the proposed development and one as she was a garage tenant on the land relating to the proposed development. Both letters were different and contained different information. The reference to taking a new garage elsewhere was only mentioned as an option due to Mrs Y renting one of the garages being consulted on.
  - Once the Council decided to consider demolishing the garages it decided to reduce the maintenance as it could better invest this money elsewhere but it still committed to repairing the occupied garages on request.
  - It carried out a parking survey in January 2020 and considered this as well as the dwellings in the proposed development to calculate what parking would be needed.
  - The proposed development would not go ahead if the planning application was unsuccessful but, if this were the case, the Council may submit revised plans and this would mean another opportunity for public comments.
  - Mrs Y had an opportunity to object to the demolition of the garages and could comment on material planning aspects during the planning application. The consultation was not a statutory process but was undertaken as a matter of best practice to get comments from local residents.
  - The Council noted and considered any correspondence received during the consultation.
30. Unhappy with the Council's response, Miss X brought her complaint to the Ombudsman later that month.
31. In response to a draft of this decision, Miss X said she believed the Council had already decided to dispose of the garages as far back as 2017 and the consultation was weighted unfairly towards achieving this aim. Miss X said she felt the process was unfair and the Council acted to create bias towards its objective of disposing of the garages.

### **Analysis**

32. When considering complaints, if there is a conflict of testimony or evidence, we make findings based on the balance of probabilities. This means weighing up the available relevant evidence and basing our findings on what we think was more likely to have happened. Sometimes it is not possible to come to a finding, even on the balance of probabilities, where there is no independent evidence and both sides have differing views on the same events.

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### **Failure to maintain Mrs Y's garage**

33. The terms of the Council's garage tenancy agreements oblige it to carry out repairs, they do not oblige it to carry out regular modernisation.
34. The Council decided it would not be a good use of funds to include Mrs Y's garage in its modernisation program from January 2020 as it had identified it as a possible candidate for demolition. I can understand why this would be frustrating for Mrs Y, but it is a decision the Council is entitled to make. I do not find fault with the Council here.
35. The Council's records show that after it decided to consider the garages for demolition it received two requests for maintenance work on Mrs Y's garage. The records show both these requests were completed promptly and I do not find the Council at fault here.
36. Miss X has said Mrs Y made multiple requests to the Council for garage repairs that went ignored but has not provided evidence of these. The Council only has two reports on its system which are recorded as having been completed. I find there is not enough evidence for me to say the Council is at fault for having failed to carry out repair work that was reported to it.

### **Decision to demolish garages**

37. The Council's decision to demolish the garages and use the land for other purposes is a commercial decision it is entitled to make. This is also set out in the Council's published garage management strategy. I cannot find fault with the decision the Council has made here.
38. The Council did not need to consult with garage tenants and local residents, but it did this as a matter of best practice to get their views and make them aware of its plans. The Council has said it considered all the points it received, including those from Miss X and Mrs Y, before deciding to proceed with its plans and I do not find fault with the Council's decision-making process.

### **Communication**

39. Miss X wrote to the Council several times with lengthy responses and multiple points she wanted it to consider. From the information I have seen, the Council generally provided Miss X with comprehensive replies, including responding to all 104 points she raised in December 2020. For the most part, I do not find fault with how the Council communicated with Miss X.
40. That said, the Council did not respond promptly to the email Miss X sent it on 26 April 2021. This is fault and would have caused Miss X uncertainty, which is injustice. The Council has already apologised for not responding to Miss X's email and gave its response on 30 November 2021, I find this is a suitable remedy to recognise the impact of the fault.

### **Final decision**

41. I do not find the Council at fault for how it decided to demolish the garages, or for failing to maintain them. I find the Council at fault for not responding to one of Miss X's emails, but my view is the Council's apology is sufficient to remedy the injustice caused. I have now completed my investigation.

### **Investigator's decision on behalf of the Ombudsman**