

APPEALS PANEL 2

THURSDAY 22 OCTOBER 2015 AT 2.00PM

PRESENT: Councillors Bloxham, Burns and Graham

OFFICERS: Director of Economic Development
Building Control Surveyor
Principal Building Control Surveyor

ALSO

PRESENT: Appellant

1. APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor Bloxhambe appointed as Chairman of Appeals Panel 2 for the municipal year 2015/16.

2. APOLOGIES FOR ABSENCE

No apologies for absence were submitted.

3. DECLARATIONS OF INTEREST

There were no declarations of interest in respect of the complaint.

4. PUBLIC AND PRESS

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

5. COMPLAINT REGARDING BUILDING CONTROL

Consideration was given to covering report ED.37/15 and supporting background papers regarding a complaint made about an officer of the City Council.

The Chairman welcomed the appellant and introduced the Panel and the democratic Services Officer.

The Chairman asked the appellant to summarise his appeal as clearly as possible and what outcome he hoped to achieve from the hearing.

The Appellant explained that he felt that the matter could have been addressed quickly but it had been compounded and he had not taken the decision to progress the complaint lightly.

He highlighted the summary which he had prepared and had been included in the document pack, and commented that he had been disappointed that his documentation had been included at the back of the document pack. He circulated his summary so Members had it separately and made plans of the development available should Members wished to have viewed them during their deliberations.

The Appellant explained that he had been in email correspondence with the Principal Building Control Surveyor with regard to general building control matters and matters relating to the application in question. This had been a reasonable line of activity to raise issues, unfortunately the Principal Building Control Surveyor responded to an email that the Appellant had sent and had copied the response to the Appellant's client on 21 May 2015. This course of action was not what the Appellant had expected the Building Control team to do and the email of 21 May 2015 had had repercussions.

The Appellant had felt that his email had been straightforward and had informed the Principal Building Control Surveyor that structural information had been sent to the Building Control Surveyor. This had not been the case as the Principal Building Control Surveyor responded just over an hour later stating that his email had nothing that could be identified as structural information and his client had been copied into the Council's response. The structural information had included large drawings which could not be emailed, the email in question had been to inform Building Control that the documents were on their way.

The Appellant informed the Panel that he would not expect correspondence to go to his client. A meeting had taken place between the Appellant, the Director of Economic Development and the Building Control Manager in July to discuss the complaint. The notes of the meeting had been included in the document pack and they showed that the outcome of the meeting had been for the Building Control Manager to investigate the issue via a discussion with the Principal Building Control Surveyor.

The Building Control Manager spoke with the Principal Building Control Surveyor and sent an email to the Director of Economic Development (copy included in the document pack) detailing his discussion with the Principal Building Control Surveyor. The email stated that the client had been copied into the response as she had been the original applicant in 2013 and had been copied in to emails previously. The Appellant informed the Panel that his company had taken over as agent for the applicant in April 2014 and he had informed the Building Control Surveyor. He reported that he had corresponded with Building Control on 21 occasions and had only once copied his client in on an email to show his client that he had actioned her request. The other 21 occasions had been between the Appellant and the Council.

The email which had been sent to the Appellants client on 21 May resulted in the client submitting a complaint about the Appellant's company and her refusal to give instruction to the Appellant. The applicant had met with Building Control officers and the Appellant had felt that it had not been reasonable, acceptable or professional. The matter was

compounded by the fact that the email was caught in the Appellant's spam filter and so the client saw the email before the Appellant.

The Appellant felt that the email had been sent intentionally to cause his company damage as the Appellant had received no further correspondence or apology from the Principal Building Control Surveyor. The Appellant did not dispute the fact that his client was the applicant and that any enforcement action would be taken against her as the applicant but the convention had been to correspond with the agent when there was one.

The Appellant commented that his client had had a difficult time with the application due to bad plan drawers and builders and he felt she was vulnerable.

In response to Members questions the Appellant clarified the following:

- his client would not have taken her course of action had she not received the email
- his company had initially become involved in the application as a certifier . During his first inspection he saw that the foundations for the new build had not been deep enough and he had reached a compromise on this issue with Building Control via the telephone. Following this his client had wanted a new design drawn up within the old footprint and the Appellants company had carried out the work as her agent.
- he had taken the notes of the meeting in July as he had called the meeting but he had expected that the Council would have taken notes.

The Appellant handed Members of the Panel two emails and a hand written note which he stated had not been included in the document pack but had been included in his original pack.

The Appellant commented that complaints at eight previous Appeals Panels had not been upheld and he felt that the Panel would respond in a way which protected the authority.

The Panel responded that they were there to protect the authority but they were a public body accountable to the public. The Panel would consider all of the documentation submitted and the Appellants submission and come to an independent decision.

The Panel discussed planning related issues with regard to the application and the involvement of the Appellant.

A Member highlighted the last paragraph of the email of 21 May and asked why the Appellant had not used other Building Control services as offered. The Appellant responded that he had always used the services of the local authority and had previously had a good working relationship with the City Council Building Control Services.

The Appellant asked for the following as a solution:

- a formal apology in writing to himself and to his client
- a gesture towards the costs incurred over the previous six months whilst he had been dealing with the issue. A summary of the costs incurred had been included in the document pack.

The Appellant confirmed that his client had lodged a complaint against his company as a result of the email that had been copied into her.

The Panel thanked the Appellant for his input and advised that he would be informed by letter within 20 working days of the Panel's decision. If the appellant was not happy with the decision his next course of action would be to take the complaint to the Local Government Ombudsman, details of which would be included in the letter. The appellant left the hearing at 3.15pm

The Panel invited the Director of Economic Development, the Building Control Surveyor and the Principal Building Control Surveyor.

The Chairman summarised the appellant's complaint and asked officers what their usual course of action was when corresponding with clients who had agents.

The Principal Building Control Surveyor responded that it would depend on the nature of the correspondence and the agent. With regard to this complaint, the Principal Building Control Surveyor had included the client as she was the applicant. The Principal Building Control Surveyor explained that there had been issues with gaining information from the Appellant and, he had felt, that information had been sent to the Appellant and it had not been progressed which could result in additional fees for the client. He added that previous correspondence had been copied into the client.

The Principal Building Control Surveyor had felt it was appropriate to copy the client into the email to make her aware of the issues and the situation at that time as she was the applicant and the owner of the property.

In response to the Panels questions the Principal Building Control Surveyor explained that he had copied the email in question to the client, and not previous emails, as it was a summary of where the application was at. The builders could not progress on site and it was felt that the applicant needed to be made aware of the situation as there was a risk of enforcement action and possible additional fees that the client would be liable for. He added that all correspondence should have been sent to the client as she was the applicant and the City Council had not been notified that the Appellant was acting as the agent.

The Principal Building Control Surveyor confirmed that he had not been aware of any issues regarding foundations at the new build when he sent the email on 21 May. There had been no intention to embarrass the Appellant it was just a summary of where the application was.

The Director of Economic Development outlined how she had reached her conclusion with regard to the complaint. She had attended the meeting with the Appellant and discussed the issue; she had considered the information available and discussed it with

the Principal Building Control Surveyor. She saw no intention of the team deliberately trying to embarrass or damage the Appellants reputation. She felt that the matter had been dealt with professionally over a long period of time. The Building Control team had been dealing directly with the applicant then the Appellant became involved, from then there had been an increase in the amount of correspondence. It was the Director of Economic Development's view that the Appellant had not been discredited deliberately. She felt that the issue was the result of a misunderstanding on both sides.

The Director of Economic Development clarified that the Appellant took his own notes of the meeting which she had arranged and the Legal Services Manager had taken notes her own notes. The Legal Services Manager's notes had been used to amend the Appellants notes, a copy of the amendments had been included in the document pack.

In response to the Appellants desired outcome, the Director of Economic Development said that if the actions of Building Control caused the Appellant distress and concern then she would be happy to apologise for that. She added that there needed to be some recognition for the misunderstanding on both sides.

The Principal Building Control Surveyor commented that the situation was made worse when the email was caught in the spam filter. He added that the Building Control Manager had apologised to the Appellant and a copy of that email had been included in the document pack.

The Director of Economic Development, the Building Control Surveyor and the Principal Building Control Surveyor left the hearing at 4.15pm

The Panel then gave detailed consideration to written and verbal evidence that had been presented to them, prior to and during the hearing. The Panel checked their document pack and found that the documents the Appellant had stated were not included in the pack were included at pages 234, 235 and 247. It was:

RESOLVED –That the Panel:

- 1) did not uphold the complaint and were unanimously of the opinion that the Council and its Officers had acted within their normal working practices when corresponding with the Appellant and his client;
- 2) had considered the request for a written apology and agreed that the Appellant had received a full explanation and expressions of regret for the way he had felt the matter had been handled in an email from the Building Control Manager dated 9 June 2015;
- 3) noted that the documentation which the Appellant had stated was missing from the document pack had been included at pages 234, 235 and 247;
- 4) agreed that there had been a degree of misunderstanding on all sides and have asked Building Control to consider gaining an agreement with clients, applicants and

agents at the start of the process to determine how correspondence would be dealt with.

(the meeting ended at 4.35pm)