

Mr Tony Redmond
Local Government Ombudsman
10th Floor
Millbank Tower
Millbank
London
SW1P 4QP

21 October 2004

Your ref: 04/A/09337/ACM

Dear Mr Redmond,

Thank you for your letter of 17 September 2004.

In order to help move forwards your enquiry into the situation regarding myself, Wycombe District Council, developments within Building Regulations law from 1965 to 1990, and the impact of *Murphy v Brentwood Council* I have outlined below a concise history of events and facts.

The building of 5 houses: 1979-1981

Bowden Court, Bowden Lane, High Wycombe, Bucks

1. Pearce Edmunds & Partners were commissioned as structural engineers and Mr Anthony Milton as the architect
2. On 14 August 1979 Mr Anthony Milton submitted the drawings and calculations (calculations dated 11 May 1979) to Wycombe District Council for approval
3. The calculations did not concur with the drawings. The calculations showed that 10" x 3" joists should be used, whilst the drawings showed that 9" x 2" joists should be used.
4. Wycombe District Council passed and approved both the drawings and calculations on 11 November 1979
5. Wycombe District Council did not do either of the following:
 - pass and approve the drawings but not the calculations
 - pass and approve the calculations but not the drawings
6. Building was duly undertaken and completed on the basis of drawings and calculations that were passed and approved by Wycombe District Council
7. Wycombe District Council passed and approved drawings that were not compliant with the Building Regulations. In May 1988, as a result of following drawings that were passed and approved by Wycombe District Council, but that were not compliant with the Building Regulations, I was made bankrupt. Consequently my family, including my wife and 3 children, were made homeless
9. In 1992 I found that the drawings were flawed, and did not comply with the Building Regulations of 1979.

Service provision

- Pearce Edmunds prepared the structural calculations and Mr Anthony Milton prepared the

drawings. Mr Anthony Milton submitted both the calculations and the drawings to Wycombe District Council for approval.

- Pearce Edmunds and Mr Anthony Milton fulfilled the service paid for by myself and required by Wycombe District Council.

Legal authorisation

- In 1979, in accordance with the Building Regulations, local authorities were the legal body with the authority and responsibility to approve or reject Building Regulations Applications.
- A Building Regulations Application could only be passed and approved by the local authority if it was found to be in compliance with the Building Regulations.
- As per its legal role, Wycombe District Council passed and approved the full Building Regulations Application submitted on 14 August 1979, including all calculations, plans and drawings.

Besides being bankrupted for following drawings passed and approved by Wycombe District Council, my contention is with:

1. The response of the Ombudsman in 1993
2. The implications of Murphy v Brentwood Council case law – introduced by the House of Lords

The Ombudsman

On 19 August 1993 the Ombudsman wrote to me saying:

"I am satisfied from the documents which the Council have supplied to me that calculations which differed from the drawings were submitted after the drawings¹. In my view it is good practice for Councils to ensure that such discrepancies are not part of approved applications and I understand that the Council now check for such discrepancies though they did not do so in 1979^{2, 3}. It appears that the architect failed to pass on to you the full Building Regulations documents, which included the revised dimensions as shown in the calculations⁴".

The Ombudsman's remarks are incorrect for 4 reasons:

¹ Mr Anthony Milton's application submission letter to Wycombe District Council of 14 August 1979 (please see enclosed) states that it encloses the structural calculations prepared by Pearce Edmunds. Wycombe District Council have presented no record of revised structural calculations submitted after 14 August 1979.

On 29 January 1993 Wycombe District Council verified that the approved drawings and calculations were submitted together (please see enclosed):

"Structural matters relating to the five houses and garages constructed in Bowden Lane, were handled by your consultant engineers, Messers Pierce Edmonds, who submitted calculations for the first floor structural timbers which indicated that 250mm x 75mm joists at 400mm centres should be used. These calculations were submitted with the detailed drawings, and the calculations and plans

formed part of the full Building Regulations application which was approved on the 11th November 1979. I confirm the calculations were in fact approved correctly as they were clearly in accordance with the Building Regulations”.

² From 1 February 1966 the building byelaws were replaced by national Building Regulations executed by the Minister of Public Buildings and Works. These regulations applied to the whole of England and Wales except to the Inner London area as defined in the London Government Act 1963. The regulations conferred the responsibility for the approval of building regulations applications upon the local authorities.

The Building Regulations from 1966 to 1979 and beyond stated “Any person wishing to erect a new building or carry out work to which the regulations apply must give notice of his intention to the local authority” (Please see extracts enclosed. Every publication from 1967 to 1982 identified the same rules, including “The Building Regulations: Explained & Illustrated for Residential Buildings”, First Published by Crosby Lockwood & Son Ltd, by Vincent Powell-Smith and Walter S. Whyte, 1967; “The Building Regulations: Explained & Illustrated for Residential Buildings Fifth Edition”, Published by Granada Publishing Ltd, 1978, Reprinted 1979, by Vincent Powell-Smith and Walter S. Whyte, “The Building Regulations: Explained & Illustrated for Residential Buildings sixth edition”, Published by Granada Publishing Limited, 1982, by Vincent Powell-Smith and Walter S. Whyte”)

“Part A – GENERAL” of the Building Regulations concerned the deposit of plans and erection of buildings. Within Part A, RULE B entitled “Erection of Buildings” refers to the particulars of the required plans and states “These particulars must be sufficient to allow the local authority to check compliance with the regulations” (Please see extracts enclosed, which refer to the drawings and calculations required).

It was necessary, obligatory and legal practice for the local authority to ensure that the particulars complied with the regulations.

If the local authority required more information the local authority would refer to Rule E entitled “Additional Requirements”, which stated “Where the local authority consider that more information is necessary, for checking proposals under B, C, D or G, they may require the following extra drawings or particulars” (Please see extracts enclosed)

No additional requirements were requested by Wycombe District Council to approve the full Building Regulations application submitted for the Bowden Lane project in 1979.

The statements of correct practice written in the Building Regulations that applied in 1979 categorically differ to the Ombudsman’s response in 1993.

The implication in the Ombudsman’s sentence is that it was ‘good practice’ for the Council to approve correct drawings rather than incorrect ones. The law required that it was necessary practice.

It is misleading to refer to legal practice as “good practice” in the context of the local authorities’ responsibilities in 1979 – which they were bound by.

The legal requirements written in the Building Regulations are also categorically at odds with a letter I received from Wycombe District Council on 30 July 1993, which stated:
“The Agent did not supply revised architectural drawings to concur with the structural calculation information and, although this would have been good practice, it is not considered an item for which

Building Regulation approval could have been withheld”.

In addition to confirming that the drawings and calculations were approved at the same time, this statement implies that the Building Regulations required the local authority to approve or reject applications on the basis of calculations alone, which was not the case. The Building Regulations are unambiguous with respect to the particulars that required mandatory approval from the local authority.

To repeat, Wycombe District Council had all the necessary information to check the application in accordance with RULE B. The drawings submitted were not in compliance with the regulations. In accordance with Rule E, Wycombe District Council should have requested ‘additional requirements’ if the drawings were not compliant. Instead, they did not do so, and approved non-compliant drawings.

³. The implication in this sentence is also that it was not the responsibility of the local authority to ensure that approved drawings and calculations concurred and complied with the building regulations.

This is paradoxical as it would mean that:

- The local authority could approve incorrect drawings
- The local authority could approve incorrect calculations

The local authority’s legal authority would be redundant and inconsequential.

⁴. Given that the full Building Regulations application submitted on 14 August 1979 was approved on 11 November 1979, with no request for amendments to the drawings, this is irrelevant. As Wycombe District Council stated on 29 January 1993, the “calculations were submitted with the detailed drawings, and the calculations and plans formed part of the full Building Regulations application which was approved on the 11th November 1979”. To repeat, the council did not request additional drawings for approval. The council could not and did not state in 1979 that it was the calculations only that were approved and not the drawings. The Building Regulations application was approved in its entirety – including both drawings and calculations submitted on 14 August 1979.

Wycombe District Council’s approval of the Building Regulations Application submitted in 1979 was incorrect, as was the Ombudsman’s letter in 1993.

Murphy v Brentwood Council

The case law of Murphy v Brentwood Council would state that there is no redress for me as a local authority cannot be held responsible for its authorisations unless there is personal injury or to adjacent property as a result.

On 19 March 1999 Alec J Custerson, Building Regulations Division, The Department of the Environment Transport and the Regions stated:

“The law is currently governed by the precedent created by a well known case called Murphy v Brentwood District Council (House of Lords, 26 July 1990). The result is that unless the effect of a building failure results in the injury to a person or persons, or to adjacent property, a local authority

is unlikely to be held liable or responsible for any economic damages which may result - although it is of course always open to the Courts to change or modify this approach”.

Not only does this case law open up a clear grey area with respect to tort law, but in this case – where the local authority approved non-compliant drawings that formed “part of the full Building Regulations application which was approved on the 11th November 1979” - renders the local authority’s ‘authority’ redundant and inconsequential.

With respect to the Building Regulations, the local authority is therefore in an untenable position:

- If it exists to authorise drawings and calculations based on their compliance with the Building Regulations, its authorisation has no value.
- If it exists to provide an approval service, it failed as the drawings should not have been approved.

As a citizen, I prefer my local authority to accept its responsibility rather than dodge it.

As a customer and citizen, I expect to be compensated for any economic loss.

Given the above, in this case the local authority is liable for and responsible for the economic damages which have resulted, and I expect an amendment to the governance of current law by the precedence of the Murphy v Brentwood Council case accordingly.

I trust that you will provide a valuable investigation into the situation.

Should you have any questions please do not hesitate to contact me on 01494 471710.

I look forward to hearing from you.

Yours sincerely

Malcolm Debono

cc. see attached