

## Council accepts practical solution to resolve concerns about building consent

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Local authority
<b>Ombudsman</b>	Sir Brian Elwood
<b>Case number(s)</b>	C5410
<b>Date</b>	1999

---

*Building consent for garage—garage constructed to wrong plans—Council issues notice to rectify—retrospective consent granted—withdrawal of notice to rectify*

This investigation was directed at a District Council’s decision to issue a notice to rectify a building structure. A house owner had wished to replace her carport with a garage. Her draftsman submitted a plan to the Council for consent in respect to the setback from the road. The application was notified and discussed with an adversely affected neighbour, and then amended. The Council then issued resource consent. Work commenced on the garage when the owner was on holiday and when she returned the garage was partly completed, but she thought its height did not comply with the amended plan. She asked her builder to stop work and for the Council to inspect the garage. She also asked her draftsman to seek direction from the Council.

The complainant said that the Council did not inspect the garage. Her draftsman advised her that he had discussed the garage with the Council and was advised the building could proceed as built. The Council disputed this. The garage was then completed but the neighbour complained that the pitch of the roof was higher than she had consented to. This proved to be correct and the Council issued the homeowner with a notice to rectify. The owner complained that the notice was unreasonable.

In the course of the investigation it was established that the Council had mistakenly issued the unamended plan to the builder. It was reasonable to assume that if the Council had checked to see that it was in fact releasing the amended plans that the garage would have been built to

those plans and complied with the resource consent. The initial liability for the building therefore appeared to lie with the Council. The situation demanded a practical solution, either in the form of the roof being lowered, or an application for retrospective consent. The owner applied for retrospective consent. Following notification and submissions by the neighbour, the application was heard by an Independent Commissioner. The complainant obtained consent and the Council withdrew its notice to rectify.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*