

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

Summary: Ms X complains about the Council's decision to approve her neighbour's planning application. There was some fault in the wording of a policy, which the Council agreed to rectify. The fault did not make a difference to the outcome of the Council's planning decision.

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## **The complaint**

1. Ms X complains about the Council's decision to approve significant amendments to an approved planning application for a house next to her home.
2. Ms X says that the Council:
  - failed to take account of neighbour representations;
  - should have referred the application to the planning committee and not allow it to be decided by officers using delegated powers;
  - should have insisted upon a full planning application, rather than accepting and deciding an application to vary planning conditions on an earlier approval;
  - failed to assess the accuracy of application plans;
  - granted access over its own land by approving the application; and
  - relied on the continued existence of a tall hedge to protect amenity, but the hedge was later removed.
3. Ms X says, because of the Council's failures, her amenity is affected and the value of her home is reduced.

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

4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. If we are satisfied with a council'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*)
6. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free

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service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:

- it is unlikely we would find fault, or
- the fault has not caused injustice to the person who complained, or
- the injustice is not significant enough to justify our involvement, or
- it is unlikely further investigation will lead to a different outcome, or
- we cannot achieve the outcome someone wants.

*(Local Government Act 1974, section 24A(6), as amended)*

## **How I considered this complaint**

7. I read the complaint and discussed it with Ms X. I read the Council's response to the complaint and considered documents from its planning files, including the plans and the case officer's report.
8. I gave the Council and Ms X an opportunity to comment on a draft of this decision and took account of the comments I received.

## **What I found**

### **Planning law and guidance**

9. Councils should approve planning applications that accord with policies on the local development plan, unless other material planning considerations indicate they should not.
10. Planning considerations include things like:
  - access to the highway;
  - protection of ecological and heritage assets; and
  - the impact on neighbouring amenity.
11. Planning considerations do not include things like:
  - views over another's land;
  - the impact of development on property value; and
  - private rights and interests in land.
12. Councils may impose planning conditions to make development acceptable in planning terms. Conditions should be necessary, enforceable and reasonable in all other regards.
13. Council constitutions set out how decisions are made. Some decisions are made by committees of members and some by officers, using delegated powers.
14. Planning enforcement is discretionary and formal action should happen only when it would be a proportionate response to the breach. When deciding whether to enforce, councils should consider the likely impact of harm to the public and whether they might grant approval if they were to receive an application for the development or use.

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## **Background**

15. Ms X's neighbour had planning permission to build a single storey house on land next to her home. The Council approved the application subject to planning conditions, including one that required the development was built in accordance with the approved plans.
16. In 2018 the neighbour applied to vary this condition, by changing the plans to change the design, mainly by adding a further storey. Ms X and others objected to the application. The case officer wrote a report, setting out his views on the application. The report includes:
  - a description of the location and proposal;
  - a summary of relevant site history;
  - details of relevant planning policies;
  - a summary of comments from consultees, including neighbours;
  - an analysis of the material planning considerations, including site history, green-belt policy, design and visual impact, impact on neighbouring amenity and vehicle parking and highway access and parking.
17. The case officer recommended approval subject to conditions, including one that required the development was built in accordance with plans.
18. The Council approved the application, subject to the recommended conditions. The decision was made by an officer using delegated powers. The Council's delegation scheme says that minor applications will be decided by committees, unless there are:
  - five or more letters of objection or support (but not a combination of both);
  - the letters are received before the 21-day consultation deadline; and
  - the local member confirms in writing that they do not wish the application to be decided by the planning committee.
19. Ms X was unhappy with the Council's decision and complained to us.
20. After she had complained to us, Ms X realised the new house was being built closer to her boundary than was shown in the plans. She complained to the Council, and an enforcement officer visited the site. The enforcement officer agreed there was a breach of planning control and the Council invited the developer to submit a retrospective planning application to seek approval for what had been built.
21. A new case officer considered the application and wrote a report. The report covered the same issues as before, but focused on the change, the position in which the new building had been built. The case officer set out the differences and recognised there would be some overlooking towards Ms X's home, though most of the first-floor windows would be obscurely glazed. The officer recommended approval, subject to conditions. The retrospective application was approved by an officer using delegated powers.

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## **My findings**

22. We are not an appeal body to planning decisions and third parties, such as Ms X, have no right of appeal in the planning process. Our role is to review the process by which decisions were made and, when we find fault, to determine whether it caused an injustice. To decide whether an injustice was caused, we must first decide whether, but for the fault, it is likely the outcome would have been different.

## **The 2018 planning decision**

23. Ms X's complaint to us focused mainly on the 2018 planning approval. I see no evidence of fault in the way that this planning application was considered and the decision made, though I do have some concerns about the Council's delegation scheme, which I will say more about below.
24. I can see that before a decision was made, the Council followed the process we would expect, taking account of the application plans, relevant policy, the concerns of neighbours and other material planning considerations. The 2018 approval added a second floor to the house approved in 2015 and I do not doubt this significantly increased the impact the new building would have on Ms X. However, the documents show the Council knew about the change it approved and considered the implications.
25. The Council responded to my enquiries to confirm that before the consultations deadline ended, it received four letters of objection and two of support. It says three more letters were received after the deadline expired.
26. The Council says that because of this, the constitution allowed for the application to be approved by officers using delegated powers.
27. Some of the objection/support letters on the Council's website had receipt dates on them, but some did not. The Council says there are some technical difficulties in showing receipt dates on its website, but it is looking at ways to resolve this problem. It says its internal database does show receipt dates, which can be provided if required.
28. Most of this complaint relates to the 2018 planning decision. The developer did not build in accordance with this approval and so no significant injustice can be caused by the plans approved by this decision. It is possible that Ms X may question the Council's response regarding numbers and dates of objection letters, but as the building is not built in accordance with these plans, but with a later approval, there is little to be achieved by further investigating the process for this decision.

## **The Council's enforcement decision**

29. After building began, Ms X noticed the building was closer to her boundary than was approved in the plans. Towards the end of 2018, an enforcement officer visited the site, decided there was a breach of planning control and invited the developer to submit a fresh application to vary the plans.
30. The planning enforcement process we expect is as follows. We expect councils to consider allegations and decide what, if any, investigation is necessary. If the council decides there is a breach of control, it must consider what harm is caused to the public before deciding how to react. Providing the council is aware of its powers and follows this process, it is free to make its own judgement on how or whether to act.

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31. Government guidance says formal enforcement action should be the last resort and councils are encouraged to resolve issues through negotiation and dialogue with developers.

32. The Council has followed the process we expect in making its enforcement decision and so I find no fault in how it reached its judgement.

### **The 2019 planning decision**

33. Following the enforcement visit, the developer submitted a retrospective planning application for what had been built.

34. Before it made its decision in early 2019, the Council considered the plans, the building as it was constructed, objections from neighbours, relevant policy and other material planning considerations. The Council followed the process we would expect, and so I find no fault in the way this decision was made.

### **The Council's delegation scheme**

35. In its response to my enquiries, the Council said the delegation scheme would not be triggered if it received five or more objection (or support) letters from the same individual or the same household. However, the delegation scheme does not make this clear. We expect policy to be clear and unambiguous. The Council's policy does not meet this standard and it does not accord with the Council's working practices. Because of this, I find fault.

36. The receipt dates of objection or support letters are important, as they influence the outcome of the delegation scheme. Planning decisions are made in public and it is important the public can see the process is properly followed. It would be good practice if the letter receipt dates were shown on the website, but the Council should have a formal record that can be produced if necessary.

37. When we find fault, we need to determine whether it caused a significant injustice to the complainant. Ms X believes a planning committee might have made a different decision, but I have no evidence to show this would be the most likely outcome. The case officer's reports for both the 2018 and 2019 planning application decisions demonstrate that the material issues were considered.

38. I cannot say it is more likely than not that a committee would have decided against following officer advice. In any event, Ms X's concerns mostly related to the 2018, decision, which was superseded by the 2019 approval.

39. However, planning policy should be clear and unambiguous so that it may be understood and applied consistently. Because of this, I recommended the Council review its policy and inform us of the changes it makes. The Council accepted my findings and recommendations.

### **Other matters**

40. Ms X raised other matters, but I have decided not to investigate them further. My reasons are as follows:

- *The Council should have insisted on a 'full plans' application.* The type of application was a matter for the developer to decide, in the first instance. The Council might, at its discretion, have decided another application type to be appropriate, but that is a matter for its judgement. We are not an appeal body for planning judgements and decisions and no allegation of procedural fault is made here.

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- *The Council failed to assess the accuracy of application plans.* The duty to submit accurate plans is placed on the developer. The Council will only be criticised if an error would have been obvious to any planning officer and that the difference is significant to the outcome. I have seen no evidence to support either part of this test.
  - *The Council granted access over its own land by approving the application.* Land ownership rights are not planning considerations and can have no bearing on the outcome of planning decisions. Whether the Council chooses to grant legal rights to other individuals is a matter for it to decide. The impact on highway safety was considered during the planning process.
  - *The Council relied on the continued existence of a tall hedge.* The hedge is referred to in the 2018 case officer report, and no doubt provided some benefit to Ms X. However, the case officer did not conclude it was essential and did not protect it using planning controls.

### **Agreed action**

41. The Council agreed to review its policy and clarify it. It will then ensure its officers and members are aware of and understand the changes.
42. The Council will make necessary changes to its policy and/or working practices and report them to the Ombudsman within three months from the date of this decision.

### **Final decision**

43. I found fault in the way a Council policy was worded. I completed my investigation because the Council accepts my findings and recommendations.

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