

The Ombudsman's final decision

Summary: Mr and Mrs X complained about the Council's decision to approve their neighbour's planning application. We found fault because the Council does not have a copy of its planning case officer's report. We completed our investigation because the Council agreed to the remedy we suggested.

The complaint

1. Mr and Mrs X complained about the Council's decision to approve their neighbour's planning application to extend and alter their home.
2. Mr and Mrs X said the approval allowed their neighbour to seriously affect their amenities, including:
 - loss of light;
 - privacy;
 - overshadowing; and
 - overbearing impact.
3. They are especially concerned about loss of light to their kitchen, which is on the side of their home facing the new development.

The Ombudsman's role and powers

4. 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*)
5. 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

6. I read the complaint and discussed it with Mrs X and a planning manager. I read the Council's response to the complaint.

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7. I gave Mr and Mrs X an opportunity to comment on a draft of this decision. I considered the comments I received before making a final decision.

What I found

Planning law and guidance

8. Councils should approve planning applications that accord with policies in the local development plan, unless other material planning considerations indicate they should not.
9. Planning considerations include things like:
- access to the highway;
 - protection of ecological and heritage assets; and
 - the impact on neighbouring amenity.
10. Planning considerations do not include things like:
- views from a property;
 - the impact of development on property value; and
 - private rights and interests in land.
11. We normally expect to find evidence of consideration of the key material issues in the case officer's report, which is written to advise the decision making body or individual.
12. We accept that delegated reports might be written differently, as their target audience is a professional planner, not a member of the planning committee. However, delegated reports still need to demonstrate the core issues have been considered and set out the reasons for judgements on planning matters, albeit briefly stated.
13. The purpose of the report is not merely to facilitate the decision, but to demonstrate the decisions were properly made and due process followed. Without an adequate report, we cannot know whether the council took proper account of the key material planning considerations or whether judgements were affected by irrelevant matters.
14. The courts have made it clear that case officer reports:
- do not need to include every possible planning consideration, but just the principal controversial issues;
 - do not need to be perfect, as their intended audience are the parties to the application (the council and the applicant) who are well versed of the issues; and
 - should not be subject to hypercritical scrutiny, and do not merit challenge unless their overall effect is to significantly mislead the decision maker on the key, material issues.
15. Not all planning decisions are made by council planning committees. Councils may delegate decisions to planning officers to make, that are restricted to circumstances set out in delegation schemes. Delegation schemes are found in a council's constitution.
16. Decisions made by officers using delegated powers are controlled by the Openness of Local Government Bodies Regulations 2014. The 2014 regulations

require that certain decisions and their background papers are publicised on council websites, as soon as is practicable after the decision is made.

17. The 2014 regulations apply to a decision that has been delegated to an officer, if it:
- grants a permission or licence;
 - affects the rights of an individual; or
 - awards a contract or incurs an expense that materially affects the council's financial position.
18. The courts have found that the regulations apply to delegated decisions relating to planning applications and planning enforcement.

What happened

19. Mr and Mrs X's neighbour submitted a planning application to extend their home. The application was considered by a planning case officer, who wrote a report setting out their analysis of the issues and recommendations. The case officer's report and the application were considered by a planning manager, who approved it using delegated powers.
20. The planning manager told me that he recalls the application and has since visited the site. He thinks it is likely the report covered the main issues, which are:
- a description of the site and proposal;
 - a summary of neighbour comments;
 - the policy background;
 - comment and analysis, including the impact on the street-scene and neighbouring properties, and issues raised in neighbour comments;
 - a recommendation to approve with a list of suggested conditions.
21. The planning manager said the Council cannot provide a copy of the report. This is because of a technical problem following a change in software. The manager went on to say that after planning data was transferred from its original software system to the new system, complaints where revised plans triggered the re-notification process, the original case officer reports were lost.
22. The Council is now considering a retrospective planning application. This happened because the new building was not constructed in accordance with plans. The Council had approved extensions and changes to the existing building, but instead the property was demolished. Further to this, it had been built closer to the boundary shared with the complainants and the eaves were higher.
23. The Council has told me that it will refer the retrospective planning application to its planning committee to decide at its next scheduled meeting.

Findings

24. A planning case officer's report is an important document, as it can explain how the Council reached the decision it did. Councils are obliged by law to keep records of decision reasoning and background documents and to publish them on its website.
25. The Council is at fault because it does not have a copy of the case officer report for this case, and it is not available on its website.

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26. This fault causes uncertainty for the complainants, who still have concerns about the original decision to approve their neighbour's application, but they cannot know whether the planning issues were properly considered at the time. However, as the building was not built in accordance with this application, the complainants will get the opportunity to comment on the retrospective application.
27. I recommended a remedy to remedy the injustice, so far as it is now reasonably possible to do so, that is caused by the fault I have found. The Council has agreed to the remedy and informed me that it has already begun the work necessary to comply with it.

Agreed action

28. To remedy the injustice I have found, the Council agreed to the following:
- a) It will write to the complainants and apologise for the uncertainty caused by the fault. This part of the remedy will be carried out within one month from the date of our final decision.
 - b) It will correct its records by writing a post-decision case officer report that explains issues and recommendations. This report will be saved on its planning file and uploaded to its website. This part of the remedy will be carried out as soon as possible, but no later than one month from the date of our final decision.
 - c) The Council will report what has happened at its next scheduled meeting of its planning committee, so the members and the public can be made aware of the fault I have found, and it is placed on the public record through committee papers and minutes. The Council will confirm this has happened within one week from the date of the next planning meeting.

Final decision

29. I found fault that caused injustice to the complainants that the Council has agreed to remedy. I have now completed my investigation.

Investigator's decision on behalf of the Ombudsman