

The Ombudsman's final decision

Summary: The Council properly considered a planning application for a new house and followed proper processes in deciding to approve the application. It did not properly notify the complainant of the application but this caused limited injustice. The Council handled the complaints on these matters in line with its procedures.

The complaint

1. Ms X complained about the Council's decision to approve a planning application for a development next to her property.
2. Specifically, she complained the Council did not apply its local design guidance and approved a building that will have a considerable impact on her privacy and enjoyment of her property. She was also concerned the development will have a negative impact on the value of her property.
3. In addition, Ms X complained about a lack of impartiality in the way her complaints on these matters were handled by the Council.

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*)

How I considered this complaint

6. I have spoken with Ms X and considered written information from her.
7. I have considered the relevant planning records publicly available on the Council's website; and
8. I have considered the Council's Residential Design Guide 2016, its Statement of Community Involvement (2017) and its complaints procedure.
9. I have written to Ms X and the Council with my draft decision and given them an opportunity to comment.

What I found

Summary of events

10. The Council received a full application for a development on a plot of land bordered by existing properties on all sides.
11. The application was similar in principle to an outline application that it had refused in 2004. The Planning Inspector dismissed an appeal against that refusal.
12. The applicant made significant revisions to the design during the application process, following discussions with the Planning team.
13. The Council consulted with statutory consultees and notified the public and neighbours of the application and of the revised designs. Ms X and others said they did not receive the notifications of the original or revised design.
14. The Council approved the revised design with conditions.
15. Ms X complained about the decision to the Council. She remained dissatisfied with its responses and brought the matter to the Ombudsman.

Planning law and guidance

16. There is a National Planning Policy Framework (NPPF). This was introduced in 2012 and superseded previous planning guidance. The principle of sustainable development is central to the NPPF and that Councils should approve planning applications in accordance with Local Development Plans.
17. Local Plans set out the local design principles for development within planning guidance documents. These are not statutorily binding but a Council must have sound and evidenced reasons for approving development that is not in accordance with the principles in their Guidance documents.
18. The Town and Country (Development Management Procedure) (England) Order 2015 sets out the requirements for notification of planning applications. It says for minor applications the Council should publicise planning applications “by site display in at least one place on or near the land to which the application relates for not less than 21 days; or by serving the notice on any adjoining owner or occupier.”
19. The Council’s Statement of Community Involvement (2017) says of planning applications: “Although there is a statutory duty for the Local Planning Authority to either send letters to neighbours, or put up a site notice, we sometimes do both: e.g. in cases that are considered likely to attract more general interest.”
20. “Letters are usually sent to adjoining neighbours (i.e. those whose boundaries directly adjoin the application site). Sometimes we also write to other neighbours if we consider that they might be affected, although this is not required by law.”

Analysis

21. Ms X expressed concerns that the Council had previously refused a similar application for the same site which was upheld by the Planning Inspector, therefore the more recent approval must be flawed.
22. The refusal and related appeal took place in 2004. Since then there has been a material change in planning policy nationally and the introduction of the NPPF in 2012, updated last year. There is now a far greater emphasis on achieving sustainable development within acceptable parameters. The Council’s consideration of the new application before it had to be based on current legislation and design guidance within its Local Plan.

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23. The Council's design guidance sets out expectations for infill or backland development. It says this should respect "*but not necessarily in all instances replicate – the height and scale of adjoining or nearby buildings*".
 24. It provides a guide on separation distances between rear elevations of a new house and existing houses "*when clear glass and directly facing habitable windows are at first floor level*". It also sets out "*11m boundary rules requires that a minimum direct distance between upper level habitable rooms on a side or rear elevation and property boundaries of 11m should be achieved in order to minimise overlooking of private gardens.*"
 25. It is generally accepted in planning terms that privacy within a garden relates to an area directly behind the house itself, rather than the whole of a wider garden.
 26. Ms X's garden adjoins the development site along her rear boundary. The new house is proposed to be at a separation distance of around 20 metres from Ms X's house, but very close to her garden boundary at the end of her garden.
 27. Ms X has referred to the Council's Design Guidance which seeks to avoid new development causing a 'feeling of enclosure'. Ms X feels the new house will impact on her garden in that way.
 28. In planning terms, the development is an acceptable distance from Ms X's house and as such would not be considered to create a feeling of enclosure to her amenity, as the end of her garden would not be afforded protection by the policy.
 29. I am satisfied the Council properly considered the application against its Local Plan design guidance. While I recognise Ms X and others may not agree with the Council's reasoning, it was not perverse and the local Guidance allows for some variation – each case must be considered on its own merits.
 30. Ms X says the Council did not properly notify her of the original or revised plans during the application process and that these were presented without a new application.
 31. The Council received significantly altered designs in early February 2018. This followed discussions between the applicant and the Council, which is an acceptable part of the planning process. Councils are expected to work with applicants to enable the approval of suitable development, rather than just refuse unacceptable designs, which would trigger a right of appeal to the Planning Inspector.
 32. There were several objections from neighbouring properties after the revised plans were submitted, and some of these refer to a possible lack of adequate notification of the changes at that time.
 33. The Council says it did notify neighbouring properties appropriately of the changed designs and consulted fully. However, it accepted in response to my enquiries that it had not notified Ms X and other adjoining properties to the site of the original application. This was not in line with its Statement of Community Involvement which says the Council usually sends letters to adjoining properties to a development. That was fault.
 34. Ms X made representations after the revised plans were submitted and these refer specifically to the new plans. Therefore, the original plans were superseded. I therefore do not consider that the fault by the Council in failing to notify Ms X originally caused her a significant injustice or prevented her from making her objections to the revised plans known to the Council in time for it to consider them fully.

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35. The Council accepts it made an incorrect statement to the Planning Committee that all neighbours had been fully consulted. It also repeated that statement to Ms X in response to her complaints.
 36. The Council has said it is willing to apologise for these incorrect statements and has altered its processes to reduce the risk of non-notification. I consider this is a suitable remedy for the limited injustice caused to Ms X by the failure to notify her of the original application and the assertion the Council had notified her when it had not.
 37. Ms X complained the development will have an adverse impact on the value of her property. Neighbouring property values are not a material planning consideration for the Council in reaching its decisions on planning applications.
 38. Ms X complained that the Council had allowed an officer involved in the decision on the application to investigate her complaint at Stage 2 of the complaints process. This suggested a lack of impartiality in the complaints process.
 39. The Council has explained that the senior Officer in question was not directly part of the Planning team. He attended the Planning Committee in a role to support officers with questions from elected members of the Committee. He had no voting rights on the Committee. Officers provide information on planning applications and make recommendations to the Committee but do not make the decisions on applications before the Committee.
 40. The Committee is made up of elected Members (Councillors) and only they may vote on decisions on planning applications.
 41. The Council's complaints process says that a complaint will be considered by the relevant service manager at Stage 1 and then by 'a more senior manager' in the relevant department at Stage 2.
 42. The Officer concerned in this case was a more senior manager, therefore the Council was following its complaints procedure properly. I have seen no evidence of any conflict of interest or lack of impartiality in the way Ms X's complaints were handled.

Findings

43. I do not find fault in the way in which the Council considered the planning application for this development or in the way it reached its decision. I am not able to comment on the merits of the decision itself if the Council has followed proper process in reaching the decision.
44. I find fault in the lack of notification to Ms X and the incorrect statements made to the Committee about that and in the complaint response, but consider the Council has offered a suitable remedy and has changed its procedures to minimise the risk of this happening in the future.
45. I do not find fault in the way the Council handled Ms X's complaint.

Agreed action

46. I recommend the Council writes to Ms X to apologise for its fault in failing to notify her of the original application and in asserting it had notified her, both to the Committee and in its response to her complaints.
47. The Council should complete this within one month of my final decision.

Final decision

48. The Council properly considered a planning application for a new house adjacent to Ms X's property and followed proper processes in deciding to approve the application.
49. The Council was at fault in failing to notify Ms X of the application but this caused her limited injustice. I consider the Council's proposed remedy a suitable one for this injustice.
50. The Council was not at fault in its handling of Ms X's complaints on these matters.
51. I have therefore completed my investigation.

Investigator's decision on behalf of the Ombudsman