

The Ombudsman's final decision

Summary: Mr C complained the Council's notification of a neighbour's planning application did not explain there would be works at the rear of the building. He also complained the Council did not properly consider the impact on his amenity when it approved the application. The Ombudsman finds the Council was at fault because the delegated officer's report did not sufficiently consider the impact of the planning application on Mr C's amenity. However, this did not cause an injustice to Mr C.

The complaint

1. Mr C complained the Council's notification of a neighbour's planning application did not explain there would be works at the rear of the building, which overlooks his property. He also complained the Council did not properly consider the impact on his amenity when it approved the application. Mr C says the removal of obscured glazing/film and the installation of balcony doors will cause a loss of privacy and reduce the value of his property.

The Ombudsman's role and powers

2. 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*)
3. 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

4. I have considered the information Mr C provided with his complaint. I made written enquiries of the Council and considered the information it provided in response. I also considered the Council's relevant planning policies and the information it has published on its planning portal.
5. I shared my draft decision with Mr C and the Council and I invited them to comment on it.

What I found

Planning permission

6. The Town and Country Planning Act 1990 gives local authorities the power to decide if planning applications should be approved, refused or approved subject to planning conditions.
7. Councils delegate most planning decisions to a planning officer. The officer's report on each application should show they have considered all relevant matters. But it is for the officer to decide how much weight to give to any material consideration when determining a planning application.
8. Material considerations relate to the use and development of land in the public interest, and not to private consideration such as the reduction in the value of a property. Material considerations include issues such as overlooking, traffic generation and noise.
9. The Council has a supplementary planning document (the SPD) which gives guidance on residential developments. In the section on rear elevation, the SPD says a minimum separation distance of 27.5 metres should be achieved between rear elevations of new houses and existing houses, when clear glass and direct facing habitable windows are on first-floor level. The SPD says the outer edge of a balcony is treated as a clear glass directly facing window.

What happened

10. Mr C lives opposite an office building to the rear of his property. The rear of the building backs on to the rear of Mr C's property. The original planning permission for the building was granted in the 1990s. Planning permission was granted subject to conditions, none of which prohibited the use of the rear balcony or required the windows at the rear of the building to be obscurely glazed. Despite this, the rear windows had a film installed on them in 1998, but this was not a planning requirement.
11. In 2018, the Council sent Mr C a neighbour notification letter for proposed works to the front entrance of the building. The Council copied the information in the application form and included it in the notification letter. As a result, the letter did not mention works at the rear of the building. Mr C received this letter but did not respond because it only included changes to the front of the building and so he did not believe it would impact him.
12. Planning permission was granted and work began. The proposed plan of the rear of the building shows the insertion of new glazed doors onto the balcony as well glass to enclose the balcony. It was not part of the proposed plan for the film to be removed from the rear windows.
13. The delegated officer's report refers to the glazed doors leading onto the balcony being replaced. It concludes the proposal would improve the character on the area and would not cause any loss of amenity to neighbouring properties.
14. Mr C says around six months after the work started he realised the film had been removed from the rear windows of the building. He contacted the Council.
15. The enforcement officer at the Council carried out a site visit. He found the works were in order and found the planning application had been complied with.
16. In June 2019, Mr C contacted the Council and said his privacy would be compromised as the developer was not intending to replace the film on the rear windows. He raised a formal complaint and explained the neighbour notification

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- letter did not alert him to works at the rear of the building. He also said the installation of balcony doors would affect the enjoyment of his home.
17. The Council responded to Mr C. It explained the 1996 planning permission did not have a condition requiring the windows at the rear of the building to be obscurely glazed. There was also no condition prohibiting the use of the balcony. The Council acknowledged the neighbour notification letter it sent out did not make any reference to alterations at the rear of the building.
 18. The Council emailed the planning agent and asked if the building owners would be willing to re-install the film on the rear windows.
 19. Mr C was dissatisfied with the Council's stage one response and escalated his complaint to stage two of the Council's complaints procedure.
 20. The Council responded to Mr C's stage two complaint and re-iterated its earlier position about the 1996 planning permission and therefore it did not have any ability to take enforcement action. The Council also said it had not heard from the planning agent regarding the re-installation of the film on the rear windows of the building.
 21. Mr C remained unhappy with the Council's response and referred his complaint to the Ombudsman.
 22. In response to my enquiries, the Council says the impact of the balcony on the properties to the rear of the building was not specifically addressed in the delegated officer's report. However, it says the separation distances ensure no detriment to privacy or overlooking. This is because the distance from the first-floor window of Mr C's property to the first-floor balcony is 29.4 metres.
 23. It has also contacted the building owner again about the re-installation of the film on the rear windows and it awaits a response.

Analysis

24. The Ombudsman, when dealing with complaints about the granting of planning permission, cannot consider whether the decision was right or wrong. It is the role of the planning system, not the Ombudsman, to decide on an application. My role is to determine whether there has been administrative fault in the way the decision was made.
25. Mr C says the Council's notification letter did not explain there would be works at the rear of the building. However, it is normal practice for a council to copy the information in the application form of a proposed development and put it in the notification letter. This is what happened in this case and so I do not find fault with this.
26. Mr C says the removal of the film on the rear window has led to a loss of privacy. However, the evidence shows while film had been installed, it was not a condition of the original planning application. Therefore, the building owner could have removed the film at any stage.
27. The removal of the film was also not part of the most recent planning application or proposed plan so the Council could not have foreseen it was going to be removed. When Mr C alerted this Council to this, it inspected the site and found the development was not in breach of planning permission and therefore enforcement action was not necessary. I am satisfied the Council took the appropriate action here and so I do not find fault.

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28. Mr C says the Council failed to consider the impact of the planning application on his amenity. He says now that rear doors have been installed, it means people can use the balcony and stare into his property.
 29. The delegated officer's report does not specifically consider the installation of the rear doors on Mr C's amenity. It wrongly refers to the doors as replacement doors, when in fact they were new installations. There is no reference to the fact people would now be able to use the balcony, when this was not an option before, and what impact that would have on Mr C's privacy. This is fault.
 30. I have considered whether this fault caused injustice to Mr C. In particular, whether it may have impacted on the decision to approve planning permission. The Council's position is that because of the separation distances, the installation of the rear doors did not cause such a significant impact on Mr C's amenity to warrant refusal of the application.
 31. My view is that even if the report had considered the impact of the installation of the rear doors, it is likely the Council would have still granted planning permission. I say this because the SPD says a minimum separation distance of 27.5 metres should be achieved between rear elevations of new houses and existing houses, when clear glass and direct facing habitable windows are a first-floor level. In Mr C's case, the distance from his first-floor window to the first-floor balcony is 29.4 metres. Although the SPD refers to residential properties, and in Mr C's case his house backs onto a commercial property, I consider the Council would have used the SPD as a guideline and on balance, decided the separation distance was sufficient to protect Mr C's privacy.
 32. Therefore, while I have found fault in the Council's failure to sufficiently consider the impact of the planning application on Mr C's amenity, I am unable to conclude he has suffered injustice because of it.

Final decision

33. I have completed my investigation. Although there was fault by the Council, it has not caused injustice to Mr C.

Investigator's decision on behalf of the Ombudsman