

The Ombudsman's final decision

Summary: The Council was at fault for failing to take account of the locally protected status of a building when it granted permission for the building to be extended. It has since done everything reasonable to put this right and, as there was no other fault with the process, I have closed the complaint.

The complaint

1. Ms C complains the Council failed to take account of material information when it granted her neighbour permission to extend his house. Ms C objected to the glass structure to the rear of her house because light (from sun bounce and electric bulbs) would cause dazzle and she complained that information given to the decision-making committee, that the applicant's disability could be material, was wrong.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)

How I considered this complaint

3. I have considered all the information sent to me by Ms C and I have discussed the complaint with her. I have also considered information on the Council's public access website and the information I asked it to send me. I have also taken account of the Town and Country Planning Act 1990, the Planning and Compulsory Purchase Act 2004 and the Local Government Act 1974.

What I found

4. Ms C lives in a Victorian terrace with a small rear garden which backs on to the gardens of the terrace behind. The extension about which she complains is offset to the south of Ms C's garden.
5. Ms C objected to the extension because she considered it would be out of keeping with a Victorian terrace and the glass structure would cause sun bounce and dazzle. When the Council granted permission Mrs B complained about the decision. She also complained the decision-making committee had been given

information about the applicant's personal need for the extension to house a lift shaft which she thought was wrong.

Buildings of Local Interest

6. When Ms C complained to me, I was also investigating a complaint from another neighbour about the Council's failure to deal with the applicant's property as a Building of Local Interest.
7. Apart from nationally listed buildings, councils may create lists of buildings of local interest and afford them some protection. Cambridge City Council has a list of Buildings of Local Interest which it has published on its website.
8. When considering planning applications, the Council must take account of its Local Plan and associated policies. Policy 4 / 12 of the Council's Local Plan deals with Buildings of Local Interest. It says: "*Applications for planning permission to alter such buildings will be considered in the light of the Council's Approved Guidance on Alterations and Improvements to Buildings of Local Interest.*"
9. The officer's report made no reference to the building being on the local list although it is clear from the list published on the Council's website that it is. The Council accepted this error and, without prompting from our office it wrote to apologise to both complainants. It also arranged for the application, with full information, to go back to its Members for a decision about whether permission should stand or be revoked.

The applicant's personal circumstances

10. Personal circumstances such as health and disability are not generally material planning considerations. Ms C says the planning officer told Members at their meeting that personal circumstances could, occasionally, be material.
11. I have read the officer's report. The officer explained the extension had been designed around the health needs of the applicant but made clear the application should be assessed according to planning policy and not because of the applicant's needs. The planning officer may have elaborated on this to Members but there is nothing to suggest Members approved the application which, but for the personal circumstances of the applicant they would have refused.

The likelihood of glass causing dazzle.

12. Ms C's objection to the possibility of 'sun bounce or dazzle' was summarised in the officer's report under a section dealing with light pollution.
13. The officer noted Ms C's property was south facing to the rear and at an angle from the rear of the application property (which faces north). The officer considered the combination of the path the sun would track (as it moves from east to west at the different times of the year) and the angles of the surfaces of the roof and sides of the new glazed extension and concluded from these that sun dazzle was highly unlikely.
14. The Council accepts this could have been made clearer in the case officer's report but the conclusion (at paragraph 9.1 of the report) does refer to the overall impact on amenity (including from the glazed design) being acceptable.
15. The case officer also asked for lighting details from the applicant's architects so he could understand whether lighting sources would be visible from outside the property (and whether this would be an issue or not). These plans showed down-lighters would be used to avoid the light source inside the extension being visible outside. The planning officer considered this to be an acceptable approach. (A planning condition, number 4 was also recommended to ensure this lighting specification was implemented).

Agreed action

16. Apart from its failure to deal with the application site as a Building of Local Interest, there is no evidence of fault with the rest of the process. When it realised its mistake, the Council volunteered the following action without prompting from our office:
- it wrote a letter of apology to Ms C and offered her a small compensation payment in recognition of the time and trouble to which it had put her by overlooking the protected status of the properties.
 - it took a fresh report to Members explaining the error and how this may have affected the decision. It asked Members to decide if the permission should stand or be revoked.
 - it has reviewed its procedures (and will monitor the outcome of the review) to ensure buildings on the list of Buildings of Local Interest are identified at an early stage in the planning process.

Final decision

17. The Council was at fault for failing to take account of the locally protected status of a building when it granted permission for the building to be extended. It has since done everything reasonable to put this right and, as there was no other fault with the process, there is no reason for me to pursue the complaint.

Investigator's decision on behalf of the Ombudsman
