

Complaint reference:
14 001 400

Complaint against:
Cambridge City Council

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. Mrs B complains the Council failed to take account of material information when it granted her neighbour permission to extend his house. In particular she says:
 - it overlooked the fact their properties are on the list of buildings of local interest and subject to planning constraint;
 - it took the applicant's disability into account when it should not have done;
 - it did not ask the applicant to produce a daylight / sunlight report when it asked others making comparable applications to do so; and
 - it failed to assess if noise from a domestic lift shaft might disturb adjoining properties.

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 Mrs B and I have discussed the complaint with her. I have 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. Mrs B lives in a Victorian terrace close to the City centre. The Council granted her neighbour permission to build a modern steel and glass two storey extension, part of which would house a lift shaft which, because of a degenerative medical condition, he had reason to believe he would need.

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5. Mrs B objected to the extension which she considered incongruous on the back of a Victorian terrace. She also objected to the possibility of noise from the lift shaft. At the same time as the Council was considering her neighbour's application, Mrs B was herself in discussion with it about a small rear extension and she feared her neighbour's plans would affect her own. When the Council granted permission Mrs B complained to the Council and, dissatisfied with its response, she complained to us.

Buildings of Local Interest

6. 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.
7. 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.*"
8. The officer's report on Mrs B's neighbour's planning application made no reference to the building being on the local list and, when Mrs B queried this, a senior officer told her it was not. As is evident from the Council's website, Mrs B's terrace is on the local list.
9. The Council accepts the case officer was wrong about the house not being on its local list and its senior officer was wrong when he wrote to Mrs B telling her she was mistaken. Without prompting from our office the Council wrote to Mrs B to apologise for its error. It explains a constraints map relied on by the case officer failed to identify the terrace as on the list of Buildings of Local Interest, an error which it has now put right.
10. Also without prompting from our office and in recognition it had not given Members all the material information, the Council apologised to Mrs B's neighbour and made arrangements for the application to go back to its Members for a decision about whether permission should stand or be revoked.

The applicant's personal circumstances

11. Personal circumstances such as health and disability are not generally material planning considerations. Mrs B says the planning officer told Members at their meeting that personal circumstances could, occasionally, be material.
12. I have read the officer's report. The officer explains the extension has been designed around the health needs of the applicant but makes it clear the Council must assess the application 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.

Daylight and sunlight report

13. Mrs B's houses faces south so her neighbour's extension, affecting as it does the rear of her house, has the potential to impact on her evening light. Mrs B says, during her own pre-application discussions she was told she would need to supply a daylight and sunlight assessment. She says another nearby applicant was told the same yet the Council did not ask her neighbour for this.
14. It is not uncommon for planning officers, when assessing loss of light to neighbouring properties, to use an indicative tool known within the profession as

the '45 degree rule.' Mrs B says she asked the case officer if her neighbour's proposal passed this test but he did not give her a clear answer.

15. The Council says it has no set policy for seeking sunlight / daylight assessments but relies on the case officer's judgement of whether one is necessary. The officer did not ask Mrs B's neighbour for one for the following reasons:
 - Mrs B's house is north west of the applicant's so overshadowing would be slight and only in late afternoon;
 - The house on the other side of the applicant has a two storey extension projecting 4.2m along their shared boundary so Mrs B's neighbour's extension, lower in height, would be hidden behind it;
 - The two storey part of the extension would be set back ½ m from the shared boundary with Mrs B and project approximately 1½ m off the rear elevation, not much further than the current balcony already does. The single storey part would be set back a further 1m from the shared boundary.
 - The extension would be glazed and allow light to penetrate.
16. These are all sound reasons for the officer's decision, the merits of which the Ombudsman would have no reason to challenge.
17. The officer also comments, in relation to the 45° rule, that the applicant withdrew his original plans partly because they breached the rule. The Council has supplied a block plan of the current proposal which shows the two storey element does not cut the 45 degree line and, although the single storey element does, because it is glazed and single storey, there will be no harm. The Ombudsman would have no reason to be critical of this line of reasoning.

Noise

18. Lift mechanisms can create noise nuisance. Although the two properties are close, the Council did not ask for noise insulation as a condition of the permission.
19. I explained to Mrs B that, if the mechanism were to become a nuisance, she could complain to the environmental health officers. To be sure, I asked the Council to confirm its officers would not be constrained because the noise was "ordinary domestic noise."
20. The Council says a standard lift or lift platform is unlikely to be noisy but, if there are complaints of noise nuisance, it will investigate them.

Mrs B's proposed application

21. Mrs B suggested her neighbour's application, if implemented, would prevent the Council approving her plans because if her window were moved forward, she would be able to see into her neighbour's house.
22. The Council assures me this is not so. It says Mrs B's proposals, to extend her house no further than in line with her neighbour's, will not impact unacceptably on either of them. Mrs B doubted this, given her neighbour's extension will be glazed so I asked the Council to double-check. It has done so. Mrs B's neighbour's extension, although glazed, will have obscure glazing (ensured by planning condition) to a minimum level of Pilkington No 3. It will not be possible for anyone outside to see more than outline movement within.

Agreed action

23. 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 Mrs B 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 report to Members explaining the error it had made and how this may have affected the decision. It asked Members to decide if the permission should stand or not.
 - It reviewed its procedures (and will monitor the outcome of the review) to ensure it identifies buildings on the list of Buildings of Local Interest at an early stage in the planning process.

Final decision

24. 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