

## CAMBRIDGE CITY COUNCIL

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REPORT OF: Director of Planning and Environment

TO: Planning Committee

05/07/2017

WARDS: All

### **LOCAL GOVERNMENT OMBUDSMAN (LGO) COMPLAINT REFERENCE 16 002 481**

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#### **1 INTRODUCTION**

1.1 The LGO has upheld a complaint relating to the determination of a planning application for a single storey front extension, part two storey/part single storey rear extension following demolition of existing garden room and rear dormer roof extension. The LGO found that the failures identified amounted to 'injustice'. A copy of the LGO decision is attached (Appendix A)

1.2 In summary the Ombudsman's final decision was as follows:

The Council was significantly at fault in the way in which it determined the application by Mr and Mrs F's neighbours for a rear extension. If not for this fault, officers might have invited revised proposals. But, the Council was not at fault in the way in which it subsequently considered revocation of the planning permission. Thus the injustice to Mr and Mrs F was limited to their justifiable sense of outrage at being treated unfairly, uncertainty and time and trouble.

#### **2. RECOMMENDATIONS**

2.1 To note that the LGO has upheld a complaint relating to the determination of a planning application.

2.2 To note that in these circumstances the Head of Legal Services as the Council's Monitoring Officer has an obligation to report the findings to Council and that Committee is satisfied with the action that has been taken (set out in Section 4 of the report).

### 3. THE COMPLAINT AND THE LGO INVESTIGATION

- 3.1 The complainants complained about the way in which the Council's Planning Committee considered whether or not to revoke their neighbours' planning application and that the extension would have a detrimental effect on their residential amenity in the form of loss of daylight and sunlight to their kitchen diner. The LGO investigated these issues under the following headings:
- The Independent Complaints Investigator's report
  - The Planning Committee's consideration of the proposed revocation
  - The Council's comments
  - Was there fault and, if so, was there injustice requiring a remedy?

I have used these headings to set out details of the complaint and the LGO decision below.

#### The Independent Complaints Investigator's (ICI) report

- 3.2 The LGO noted that the ICI had identified a number of errors in the delegated report by the Case Officer which was signed off by a Principal Planner. There were errors in relation to the relationship between the two properties, measurements and the decision not to require a daylight/sunlight analysis was founded on an inaccurate assumption that all 3 kitchen windows were already compromised in terms of daylight. The ICI noted that the rearmost window was not already shadowed and this window compensated for the reduced light to the other two windows. In the absence of a daylight/sunlight analysis officers did not properly assess the impact of loss of light and the decision was unsound.
- 3.3 The LGO also acknowledged that the ICI found that when the neighbour's complaint was dealt with under stage 2 of the Council's complaints policy officers made the wrong judgment in terms of whether or not a kitchen should be regarded as a habitable room. At this stage officers also commented that an extension constructed under 'permitted development rights' would have had a similar impact on the neighbours but there were no calculations to back this up. The ICI concluded that the stage 2 response was fundamentally

flawed and that on the balance of probabilities the decision to approve the application was unsound.

- 3.4 The LGO also refers to the ICI's view that the neighbours had set aside a significant amount of time in arguing that the planning decision was unsound; their relationship with their neighbour had broken down; and they felt their quality of life had suffered, and they were seriously thinking of moving home.

The Planning Committee's consideration of the proposed revocation

- 3.5 The LGO describes the report which was presented to Planning Committee on 6 April 2016. In particular she refers to the fact that officers concluded that there would be overshadowing from the proposed extension of the neighbouring property at times when there was currently no overshadowing and that modelling of a 'permitted development' scheme shows that a similar impact would not have arisen from such a scheme. She acknowledges that the officer conclusion was that it is finely balanced case but that the impact on residential amenity was just about acceptable. She states that officers did not consider it would be expedient to revoke the planning permission
- 3.6 Planning Committee resolved not seek revocation of the planning permission and the LGO notes that officer notes indicated that members understood the planning issues they were being asked to decide and that they were concerned about the way in which the neighbours had been treated. Following the meeting the neighbours made further complaints to the Council about the conduct of the meeting and members considerations. In response to this the LGO notes that officers had visited the neighbours after the ICI report was received to explain the process of responding to his recommendations, that the neighbours were aware of the date of the Committee meeting and were able to point out matters that they wanted members to consider during the site visit. The neighbours were advised of the Committee decision on the day of the meeting and officers did not accept that they had not kept the neighbours informed.
- 3.7 With regard to the decision to exclude the press and public from the meeting, the view of officers was that this was a decision that the Committee was entitled to make. Officers also considered that the Committee report identified all the material considerations to enable committee members to form a personal view based on their judgement and that they were experienced enough to do this. The

officer's view was that the Council had acted on the Independent Investigator's recommendations.

### The Council's comments

- 3.8 The LGO asked the Council to comment on why officers did not ask the Planning Committee to consider the option of modifying the planning permission. The response from officers was that using powers under Section 97 would have required the Council to unilaterally determine the modification and under section 98 in the event of opposition from the owners of the site this would have led to a requirement for the Secretary of State to consider the merits of the proposed modification. This was seen to be an unusual process to follow for a householder extension. The modification process would have denied the owners the opportunity to consider/promote alternatives whereas the revocation process would have left them free to make a fresh planning application to meet their needs and in the event of a refusal of planning permission referral to the householder appeals process.

### Was there fault and, if so, was there injustice requiring a remedy?

- 3.9 The LGO shares the ICI view that there was fault in both the case officer's delegated report that was signed off by a senior officer and with the responses given to the neighbours as part of the Council's complaints process. The LGO's view is that these errors were unfair to the neighbours, justifiably left them with a sense of outrage and put them to unreasonable time and trouble in pursuing matters. In reaching this view the LGO was mindful that the neighbours are elderly and felt vulnerable in pursuing matters with the Council.
- 3.10 The LGO could not conclude that the Council would have refused the application if the errors in the case officer report had not occurred. The reason the LGO gives for reaching this view is that the decision to be made by the Council was not whether or not the proposed extension would impact on the neighbours' amenity but to consider the extent and acceptability of that impact. It is not open to the LGO to substitute her judgement for the professional judgements of planning officers but she acknowledges that there would be an impact with any two storey extension and she was unable to conclude that if the errors had not been made officers would not have sought amendments to reduce that impact. In addition to the injustice the LGO identified which is set out in paragraph 3.9 above she also concluded that because the errors were made the neighbour

were left a significant degree of uncertainty about whether a request to amend the plans would have been made.

- 3.11 The LGO does not criticise the officers' report to Planning Committee regarding revocation. She considered that this properly assessed the impact on the neighbours and in the light of this it is not open to her to question the conclusions reached. She also notes that it was correct to treat potential cost to the Council as a 'material consideration'. She takes the view that it might have been appropriate to have explained the implications of modification to the Planning Committee, as opposed to revocation but she is satisfied by the officer's explanation of why modification was not a viable option. She is satisfied there was no fault in the way in which the Planning Committee dealt with matters

#### 4 **LGO AGREED ACTION AND FINAL DECISION**

- 4.1 The LGO recommends the following action:

The Council should pay the neighbours the sum of £1,000 in recognition of the distress they have suffered in the form of outrage and uncertainty

The Council should make a further payment of £250 in recognition of the time and trouble the neighbours were put to in pursuing their complaints

- 4.2 A written apology has been sent from the Director of Planning and Environment and the sums recommended by the LGO have been paid to the neighbours.

#### 5 **IMPLICATIONS**

- (a) **Financial Implications** The LGO has recommended the payment of any compensation which has been met from the Planning Services budget.
- (b) **Staffing Implications** Planning officers have been briefed about the outcome of the investigations by the ICI and LGO.
- (c) **Equality and Poverty Implications** An equality impact assessment has not been carried out in respect of this report.
- (d) **Environmental Implications** This report has no climate change impact.

(e) **Procurement** There are no procurement implications.

(f) **Consultation and communication** No consultations were necessary to prepare this report.

(g) **Community Safety** No direct or indirect community safety implications.

**BACKGROUND PAPERS:** The following are the background papers that were used in the preparation of this report:

LGO final decision (29 March 2017)

To inspect these documents contact Sarah Dyer on extension 7153.

The author and contact officer for queries on the report is Sarah Dyer on extension 7153.

Report file:

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