

Complaint reference:
16 002 481

Complaint against:
Cambridge City Council

The Ombudsman's decision

Summary: 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.

The complaint

1. The complainants, to whom I shall refer as Mr and Mrs F, complained about the way in which the Council's Planning Committee considered whether or not to revoke their neighbours' planning permission for an extension. The approved extension would have a detrimental effect on their residential amenity in the form of loss of daylight and sunlight to their kitchen diner. Mr and Mrs F said in particular;
 - a) officers had made a number of errors in recommending the proposals for approval under their delegated authority; and
 - b) although the Council's Independent Complaints Investigator had found in their favour, there were serious flaws in the way in which the Planning Committee decided not to make a revocation order.
2. Mr and Mrs F told me they spend a great deal of time in their kitchen diner. They are elderly, and they have found dealing with the Council all the more difficult and stressful for this reason.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She 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, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
4. 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

5. I have considered all the information Mr and Mrs F provided. This included information they obtained from the Council through their Freedom of Information requests.
6. I have written to Mr and Mrs F and the Council with my draft decision and considered their comments.

What I found

Legal and administrative background

Town & Country Planning Act 1990

7. Section 97 provides that a local planning authority can revoke or modify a planning permission if it considers it expedient to do so. The authority should have regard to the development plan and any other material considerations.
8. The authority can exercise this power before any building or other operations are completed. It cannot exercise the power in relation to any part of building or other operations already carried out.
9. In accordance with Section 98 there is a right of appeal attached to a revocation or modification order. The Secretary of State can also modify a revocation or modification order in any way he or she considers expedient.

Local Government Act 1972

10. Schedule 12 A provides that a planning committee can exclude members of the public so as to prevent disclosure of information defined as exempt. This includes information:
 - about any individual, or likely to reveal the identity of any individual;
 - relating to the financial or business affairs of any particular person (including the authority holding that information); and
 - which reveals that the authority proposes to give a notice, order or direction under any enactment.

The planning application

11. The application was for a single storey front extension, part two storey and part single storey rear extension following demolition of an existing garden room, and a roof extension incorporating a rear dormer.

The Independent Complaint Investigator's report

12. The Investigator recommended that the Council take legal advice on the process required to revoke the planning permission. He said:
 - the officers' delegated report had made a number of errors in relation to measurements, the relationship between the two properties, and design features of Mr and Mrs F's property;
 - these indicated an unacceptable level of service delivery which had affected Mr and Mrs F's confidence in the assessment process;
 - officers made further errors in saying that light to all three of Mr and Mrs F's kitchen windows was already compromised. Thus no daylight/sunlight analysis was necessary; but

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- this was incorrect. The rearmost window was not already shadowed. It was this window that compensated for 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. Thus their decision was unsound;
 - in her stage 2 complaint response, the Head of Planning had accepted there would be a significant impact on levels of daylight and sunlight to the kitchen. But, she did not consider this would have justified refusal of planning permission;
 - she had said kitchens were not normally treated as habitable rooms. They required less protection from loss of daylight/sunlight. This was wrong. Kitchens were normally treated as habitable rooms in assessing the effect of planning proposals;
 - the Head of Planning had also said that a smaller single storey extension built as permitted development would have had a similarly significant impact. This too was a factor officers had to take into account; but
 - there were no calculations in support of what the Head of Planning said; so
 - in his view, the stage 2 response was fundamentally flawed. On the balance of probabilities, the decision to approve the application was therefore also unsound.
13. The Independent Complaint Investigator also assessed the injustice to Mr and Mrs F. He said that:
- Mr and Mrs F had had to 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

The officers' report

14. The report set out how officers had assessed the original planning application; the view taken by the Head of Planning in her stage 2 response; and the Independent Investigating Officer's analysis and conclusions;
15. It referred to local planning policy, which said: "the extension of existing buildings would be permitted if they did not overlook, overshadow or visually dominate neighbouring properties."
16. In analysing the impact of the approved development on Mr and Mrs F's home in terms of visual domination, the report said:
- there would be a brick wall facing the rearmost kitchen window. This would be five metres high and would "fill" the view. This would be 3.3 metres from the window;
 - there was an existing boundary fence between the two houses, and a large shrub in the garden which currently dominated the view of the window;
 - an extension built as permitted development would present a wall three metres high and four metres long opposite the window. This mass of wall would have a similar impact on outlook from the rearmost window as the approved extension;
 - taking account of the shrub and the permitted development (fall-back) position, officers took the view it would have been difficult to justify refusal of planning permission on these grounds.

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17. In assessing overshadowing, the report said:
- Mr and Mrs F's home lay to the northeast of the application site. So, as the sun moved from east to west the applicants' dwelling, boundary fence, and approved extension would cast a shadow;
 - shadow plans showed that at the Spring equinox the rearmost kitchen window was overshadowed by the applicants' existing house until about 2pm. By 4pm it was no longer overshadowed; but
 - the window would be overshadowed by the approved extension at 4pm. Officers had concluded, therefore, that it would cast a shadow at times when there was currently no overshadowing; ie during the afternoons between April and September;
 - modelling of possible smaller permitted development schemes showed these would not have the same impact, and would leave the window largely free from overshadowing;
 - the internal layout of Mr and Mrs F's house meant there was no outlook towards the garden from the kitchen diner. They were dependent on light from the three windows facing the side elevation of the applicants' house;
 - officers noted that Mr and Mrs F spent a lot of time in their kitchen diner. But, they were not limited to the use of this room. They had other habitable rooms on the ground floor;
 - there was also a large shrub on the boundary. Officers considered this was likely to affect the amount of light to the rear most kitchen window.
18. Officers concluded:
- this was a finely balanced case. If the overshadowing was set against the lack of visual domination compared with the fall back permitted development position, the impact on residential amenity was just about acceptable;
 - the cost of compensation was also a material consideration in deciding whether to revoke or modify a planning permission. The applicants had not begun building work. But, they could seek compensation for the costs of preparation of detailed drawings and structural engineers' costs, planning application fees etc; so
 - officers did not consider it would be expedient to revoke the planning permission.

The decision

19. Planning Committee members resolved unanimously that the Local Planning Authority should not seek revocation of the planning permission.

Notes of the meeting

20. At the meeting three officers made their own contemporaneous notes of members' debate of the issues. These sets of notes were broadly consistent with each other. They indicated that members understood the planning issues they were being asked to decide, and that they were concerned about the way in which Mr and Mrs F had been treated.

The Council's further complaint response

21. Following the Planning Committee meeting at which members considered the revocation issue, Mr and Mrs F made further complaints to the Council about the conduct of the meeting and members' consideration of matters. The Director of Planning responded that:

- when they received the Independent Investigator's report, officers had visited the applicants to explain the process of responding to his recommendations. Given the implications of these recommendations, this was entirely reasonable;
- officers had told Mr and Mrs F of the date of the committee meeting when they arranged the members' site visit. Mr and Mrs F had been present during the visit, and pointed out matters they wanted members to understand. This had included identifying the extent of the extension through marks on their fence;
- officers had also told them the Planning Committee would consider the matter later that day after the site visit. They had advised Mr and Mrs F of the outcome on the same day. So he could not accept that officers had not kept Mr and Mrs F informed of what was happening;
- the committee had explicitly considered the provisions of Schedule 12A in deciding to exclude the press and public from the meeting. This was a decision they were entitled to make;
- legislation and regulations made clear the basis on which the Council had to make planning decisions. Recommendations and decisions had to have regard to the local development plan, and other material planning considerations.
- The report identified all the material considerations to enable committee members to form a personal view based on their judgement. They were experienced enough to do this;
- officers had not obtained a detailed breakdown of the overall costs figure of £13,700 the applicants had given them. Committee members had chosen not query these; and
- he was satisfied that the Council had acted on the Independent Investigator's recommendations.

The Council's comments

22. The Director of Planning made the following comments on why officers did not ask the Planning Committee to consider the option of modifying the planning permission:

- Section 97 would have required the Local Planning Authority to unilaterally determine the modification. Where the owners of the site in question opposed this, Section 98 would have required the Secretary of State to consider the merits of the proposed modification;
- this would be an unusual process to follow for an extension to a private home. It would deny the beneficiary of a currently "lawful" planning permission any freedom to consider/promote alternatives to the modification – except through the provisions of Section 98;
- Section 98 also provides for the Secretary of State to require a further modification to the proposals prior to confirmation of the order; whereas
- the effect of the revocation order would have been to enable the applicants to make a fresh planning application. They would have been free to determine the form and content of this according to their needs. They could also have accessed appropriate pre-application advice;
- the Local Planning Authority could have then carried out neighbour consultation, and considered the application in the usual way;

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- this would have provided a simpler, proportionate and fair process for all parties (including other neighbours who might be affected differently by the revised scheme); and
 - if the Local Planning Authority refused the application, the applicant could have then used the householder appeal process, (as opposed to a Secretary of State inquiry).

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

23. I share the Independent Complaint Investigator's view with regard to fault in both the Case Officer's report and the Council's complaint responses. These errors were unfair to Mr and Mrs F, and left them with a justifiable sense of outrage. They were also put to unreasonable time and trouble in pursuing matters. I am also mindful that Mr and Mrs F are elderly and felt vulnerable in pursuing matters with the Council.
24. But, I cannot conclude that the Council would have refused the planning application, if the errors in the Case Officer's report had not occurred. I say this because officers did not have to assess whether or not the proposed extension would impact on Mr and Mrs F's amenity. They only had to assess the extent of the impact, and whether or not this was acceptable.
25. It is not open to me to substitute my judgement for the professional judgements of planning officers. I am also mindful that any two storey extension would have had some impact. So, I also cannot conclude that without this fault officers would have asked the applicants to amend their scheme to lessen the impact on daylight to Mr and Mrs F's home. But, I consider it is possible they might have done this. So, in addition to the injustice I have identified above, Mr and Mrs F have had, and will continue to have, to live with a significant degree of uncertainty.
26. I do not criticise the officers' revocation report to the Planning Committee. I consider this properly assessed the impact on Mr and Mrs F's amenity. This being the case, it is not open to me to question the officers' conclusions. They were correct in treating the potential cost to the Council as a material planning consideration.
27. It might have been appropriate to have explained the implications of modification to the Planning Committee, as opposed to revocation. But, I am satisfied by the Director of Planning's explanation of why modification was not a viable option.
28. I am further satisfied there was no fault in the way in which the Planning Committee dealt with matters.

Agreed action

29. The Council has agreed to my proposals that:
- it should pay Mr and Mrs F the sum of £1,000 in recognition of the distress they have suffered in the form of outrage and uncertainty; and
 - it should make a further payment of £250 in recognition of the time and trouble Mr and Mrs F were put to in pursuing their complaints.

Decision

30. As the Council has agreed to my proposals, I have completed my investigation.

Investigator's decision on behalf of the Ombudsman