

Appendix 1

Details of Complaint upheld by the Local Government Ombudsman

Complaint

The complainants whom I shall refer to as Mr and Mrs X complain about the way the Council publicised and dealt with a planning application for a development near to their property. They say it will have a detrimental impact onto their amenities.

What the Local Government Ombudsman Found

The Council received a planning application to build two bungalows on land next to Mr and Mrs X's property. The Council erected a notice near the site and sent notification letters to nearby properties to advertise the application.

The planning case officer visited the site and took photographs. The Council considered the application under officers' delegated powers. The planning case officer prepared a report on the application. The report described the proposal, site and referred to properties immediately north and south of the land.

The officer considered the principle of development and noted a presumption for sustainable development. And the Council would approve proposals that accorded with the adopted development plan. The officer said the proposal site was near to recently built houses so considered the principle of use and number of properties in the location acceptable. The officer considered the design and form of the proposal. And said proposals must take account of the character, scale, density and massing of the existing locality, and not adversely impact on significant street patterns. The officer noted properties nearby were single storey with chalet style types to the south. The officer considered the proposal was an acceptable design and form.

The officer considered the impact on amenity and noted the height of the proposed bungalows. The officer said the limited height and shape of roof ensured impacts from overbearing or overshadowing were located further from neighbouring properties. The officer noted the height of the roof could enable the occupant to convert it for more accommodation. So, recommended a condition on the approval to prevent installation of roof lights to keep neighbour amenity.

The officer considered the proposal acceptable and complied with the relevant development plan policies and national planning guidelines. The officer recommended approval subject to planning conditions. Senior officers considered the report and granted planning permission.

Details of the Complaint

Mr and Mrs X became aware of the planning approval and complained to the Council. They said:

- The Council failed to notify them and their neighbour of the planning application despite their properties adjoining the site. And the Council sent notification letters to two properties that were further away than theirs. Although the Council erected a site notice Mr and Mrs X said it was not near to their property and they do not walk along the road where the notice was.
- The plans submitted with the application were out of date and did not show their property. Mr and Mrs X said their home was on a sloping site so any properties built on the bordering land would be much higher than theirs whatever the design. Mr and Mrs X questioned whether the case officer had visited the site and said the officer failed to view the proposal from their property. So, Mr and Mrs X expressed concern officers had not assessed the impact of the proposal onto their property.
- The proposed bungalows would be built close to their boundary and the gable end of the homes affect their privacy and block light to their property. Mr and Mrs X said a recent structure on the application site showed the height of the proposed bungalows and the impact onto their property. Mr and Mrs X said they would have objected if told about the proposal.
- They would be subject to noise and dust during construction and loss of privacy as builders could see into their property.

The Council's response

The Council dealt with Mr and Mrs X's complaints at stage one and two of the complaints procedure. The Council explained planning law requires a council to publicise an application either by placing a site notice near to the site or by sending notification letters to adjacent properties. The Council's Statement of Community Involvement requires it to do both.

The Council noted Mr and Mrs X's and their neighbour's property were newly built and so not recorded on the Council's electronic mapping system. The Council said this was not unusual but it expected a case officer to note such properties when visiting the application site. And then check whether the properties been sent a notification letter. If not, the officer should issue a consultation letter. The Council said case records showed Mr and Mrs X had not been sent a consultation letter so apologised for the oversight.

The Council later found an error with the IT system that produces letters to neighbouring properties and it had not created a letter to Mr and Mrs X or their neighbour. The Council said it would look into the error further. The Council noted it displayed a site notice near the site. But accepted this did not mitigate the failure to consult directly with Mr and Mrs X.

The Council confirmed the case officer carried out a site visit, erected a site notice and took a photograph of the site. This showed the relationship to the houses adjoining the site including Mr and Mrs X's property. The Council said the planning officer's report mentioned Mr and Mrs X's property several times by referring to properties to the south of the site and they were recently built dwellings.

The Council said from this it was satisfied the officer report showed it directly addressed and considered the relationship of the proposed development to the rear boundary. And the elevations of Mr and Mrs X's property were considered when assessing the application. The report concluded the relationship was acceptable and the Council saw no reason to disagree with the assessment. The report also included a condition to restrict roof lights being inserted in the future to prevent overlooking of neighbouring properties. So, while it regretted the failure to notify Mr and Mrs X, it did not consider the decision to approve would have been any different even if they had sent objections.

However, the Council realised the impact its failure to notify had on Mr and Mrs X and the lost opportunity to make representations. So, offered Mr and Mrs X a £300 payment in compensation.

Mr and Mrs X remained unhappy with the Council's response and said the officer's photograph of the site barely showed their property or the height difference between the two gardens. Mr and Mrs X expressed disappointment the officer did not view the proposal from their garden to assess the impact on them. Mr and Mrs X also complained the Council had failed to respond to their complaints twice within the 20-working day target.

The Council accepted that while the photograph did not show all the adjoining properties and the application site plan did not show Mr and Mrs X's property, it was clear the officer inspected the site. The Council considered it reasonable to rely on the experience and expertise of its professional officers to recommend and determine planning applications. The Council said the plans showed the development near the common boundary. But the new bungalows only had an obscured bathroom window facing Mr and Mrs X's property with the habitable rooms on other elevations. The Council said the design of the roof reduced the visual bulk of the home way from the boundary to minimise the impact on neighbouring properties.

The Council acknowledged delays in dealing with Mr and Mrs X's complaint and the frustrations caused. It accepted a system error meant officers could not trace Mr and Mrs X's original stage one complaint. So, Mr and Mrs X needed to resubmit it. The Council apologised for its handling of the complaints.

The Council said planning services were investigating the error on the IT system in processing letters to all neighbouring properties. The Council said it would consider additional training to case officers to ensure they checked consultation records and corresponded with those who live by a development site. The Council would also look at the error about losing the original stage one complaint from Mr and Mrs X.

The Local Government Ombudsman's findings

The Council accepts it did not follow its Statement of Community Involvement when carrying out publicity for the planning application. This requires a site notice and neighbour notification letters to adjacent properties. The Council accepts it was required to tell Mr and Mrs X of the application and the case officer did not identify the failure to issue notification letters to Mr and Mrs X.

The failure to tell Mr and Mrs X is fault by the Council as its Statement of Community Involvement specifies it will erect a site notice and tell adjacent owners. I consider the fault caused an injustice to Mr and Mrs X as they lost an opportunity to comment on the proposal and explain their concerns. The Council has apologised for its failure to notify and offered Mr and Mrs X £300 in compensation. I consider this is a suitable payment and will remedy the injustice they have been caused over the lost opportunity to comment.

When considering planning applications Councils must consider what people say about proposed developments, but they need not agree with those comments. They must also look at planning policy and all other relevant planning matters affecting the development often weighing and balancing competing views and interests to reach a planning decision. Normally, if councils consider development is consistent with current planning policy and find no planning reason of sufficient weight to justify a refusal, it will get planning permission.

So, I consider, on balance, that even if Mr and Mrs X had sent objections the Council's decision to approve would have been the same. This is because the Council's documents show the case officer was aware of Mr and Mrs X's property and referred to it when assessing the impact of the proposal onto their amenities. The officer considered height of the proposed dwellings, design of the roof and considered it reduced the impact onto neighbouring properties. The officer also recommended a condition to prevent development in the roof space to protect neighbour amenity. The officer considered the proposal against current planning policy and assessed it as acceptable. This is a decision the Council is entitled to make. There is no fault in the way the Council considered the planning application so no grounds for the Ombudsman to question the merits of the Council's decision.

The Council has apologised for the delays in dealing with Mr and Mrs X's complaints. It has agreed to investigate the system error which led to the complaint being lost. While I recognise the frustration caused I consider the apology is suitable action for the Council to take.

The Council has also agreed to investigate the system error into why Mr and Mrs X were not notified of the application and to ensure officers check the consultation carried out. Again, I consider this suitable action for the Council to take.

Mr and Mrs X have raised concerns about possible noise, dust and invasion of their privacy while building works take place. Unfortunately, some disruption is unavoidable from development works. But Mr and Mrs X will need to raise any significant concerns with the Council should such issues arise.

Agreed Action

Within one month of the date of this decision the Council will pay Mr and Mrs X £300 as a compensation payment in recognition of their lost opportunity to comment on the planning application for development near to their property.

I am completing my investigation. There was fault by the Council as it failed to tell Mr and Mrs X about the planning application near to their property. So, they lost an opportunity to comment. The Council's apology and payment offer to Mr and Mrs X is a suitable remedy for the injustice caused. But there is no fault in the way the Council considered the planning application.