

Cases classified as “upheld following investigation” by the Local Government Ombudsman, April 2019 to March 2020

Case reference 190082777

The Ombudsman’s final decision

Summary: Mr X complained the Council approved a planning application for development on land the applicant did not own. There was some fault in the way the Council made its decision, but this did not make any difference to the outcome of its planning decision. The Council has agreed to take action to avoid recurrence of the fault.

The complaint

1. Mr X complained the Council approved a planning application on land that did not belong to the applicant. He says the applicant misled the Council by completing the wrong certificate on the application form and the Council did not treat the application as invalid.
2. Mr X does not claim to have been personally affected by the Council’s planning decision but thinks what has happened is unfair.

The Ombudsman’s role and powers

3. We investigate complaints of injustice caused by ‘maladministration’ and ‘service failure’. I have used the word ‘fault’ to refer to these. We cannot question whether a council’s decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. **(Local Government Act 1974, section 34(3), as amended)**
4. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as ‘injustice’. **(Local Government Act 1974, sections 26(1) and 26A(1), as amended)**
5. 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

6. I read the complaint and discussed it with Mr X. I read the Council’s response to the complaint and considered documents from its planning files, including the plans and the case officer’s report.
7. I gave the Council and Mr X an opportunity to comment on a draft of this decision and took account of the comments I received.

What I found

Planning law and guidance

8. Councils should approve planning applications that accord with policies on the local development plan, unless other material planning considerations indicate they should not.

9. Planning considerations include things like:

- access to the highway;
- protection of ecological and heritage assets; and
- the impact on neighbouring amenity.

10. Planning considerations do not include things like:

- views over another's land;
- the impact of development on property value; and
- private rights and interests in land.

What happened

11. Mr X lives on a housing estate. The owner of a house on the same estate erected a fence on land that had been left open. Mr X says this land had been maintained by the Council.

12. The Council refused a retrospective planning application for the fence because it affected highway safety and visual amenity. The house owner appealed to the planning inspectorate against the Council's refusal but failed to overturn the decision. The house owner submitted a second application for a lower fence.

13. Mr X objected to the application, partly because the applicant did not own the land and had completed the wrong certificate.

14. The Council's case officer wrote a report, which included:

- a description of the proposal and site;
- a summary of relevant planning history;
- a summary of comments from neighbours, including Mr X's;
- relevant planning policy and guidance;
- an appraisal of the main planning considerations, including impact on amenity and highway safety; and
- the officer's recommendation to approve the application, subject to planning conditions.

15. The application was approved by a senior officer using delegated powers.

16. Mr X complained to the Council. Mr X also made a freedom of information request of the Council, which confirmed ownership of the land in question had passed to the Crown Estates Commissioners.

17. The Council responded to say that, while it accepted that once information had been presented casting doubt about the validity of the ownership certificate, it would expect further enquiries, and this had not happened here. However, the Council said that it was satisfied the outcome would have been the same.

My findings

18. We are not a planning appeal body. Our role is to review the process by which planning decisions are made. Where we find fault in the decision-making process, we decide whether it caused an injustice to the complainant. To do this, we need evidence to show that, but for the fault, the outcome would have been different.

19. We normally expect to find evidence of consideration of the material issues that were raised by the planning process. In this case, an objection was raised that the wrong certificate had been completed, as the applicant did not own the site.

20. We normally find evidence of consideration in the planning case officer's report, which is written to advise the decision-making body or individual.

21. We accept that delegated reports might be written differently, as their target audience is a professional planner, not a member of the planning committee. We do not expect reports to be perfect, but they should cover any material planning consideration engaged by the process. Delegated reports need to demonstrate the relevant and material issues have been considered and set out the reasons for judgements on planning matters, albeit briefly stated.

22. The purpose of the report is not merely to facilitate the decision, but to demonstrate the decisions were properly made and due process followed. Without an adequate report, we cannot know whether the Council took proper account of the material planning considerations or whether judgements were affected by irrelevant matters.

23. An explanation of what happened that is given after the events, either in a complaint response or during our investigations, may provide relevant evidence, but it will not necessarily prove the Council acted without fault. This is because we need evidence that shows the Council exercised its discretion properly at the time its decision was made.

24. Mr X raised an objection that related to the validity of the application and the ownership certificate. This is a material planning consideration. The case officer's report includes a summary of Mr X's objection, but the report does not go on to say what the officer's opinion or reasoning was on the issue, and this is fault.

25. Where we find fault, we need to determine whether it caused a significant injustice to the individual complainant. This is because it is the injustice caused to the complainant that justifies the cost of our investigations to the public and the interference they inevitably have on the day-to-day work of the Council and its officers. I do not consider there is a significant injustice to Mr X, for the following reasons:

- Mr X lives a considerable distance from the site and is not personally affected by what has happened.
- Even if the correct certificate had been completed, there is no evidence that suggests the outcome would have been different. Though the report did not explain why it was satisfied the correct certificate had been

completed, the report did cover the main planning considerations, i.e. the impact on highway and visual amenity.

- I understand Mr X intends to inform the land's owners, the Crown Estates Commissioners, who may take action to protect their interests, if they consider it appropriate to do so.

26. However, where we find fault, we may make recommendations to improve public services and avoid recurrence. Despite the lack of evidence of a significant injustice in this case, the Council should recognise the fault set out above and remind its officers of our expectations relating to planning case officer reports.

Agreed action

27. The Council agreed to ensure its planning officers are aware of the Ombudsman's expectations for the content of case officer reports. It should confirm that it has done this within one month from the date of our final decision.

Final decision

28. There was some fault in the way the Council made its decision. I completed my investigation because the Council accepted my findings and recommendation.

Council Officer Note:

It has been confirmed that the Council has taken the necessary action as required by the Ombudsman.

Case reference 19 007 263

As identified in the report, in this case the Ombudsman decided not to investigate the complaint raised but has included it this in its annual report as complaints that have been investigated and upheld.

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr and Mrs X's complaint about the Council's publication of documents and images relating to their planning application. The Council has provided a suitable remedy for its actions and it is unlikely we would recommend anything further. If Mr and Mrs X wish to pursue the matter they should go to the Information Commissioner's Office.

The complaint

1. The complainants, Mr and Mrs X, complain the Council wrongly published documents submitted with their planning application, without their permission. They are concerned the documents may encourage burglars to target their house.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:

- it is unlikely we would find fault, or
- the fault has not caused injustice to the person who complained, or
- the injustice is not significant enough to justify our involvement, or
- it is unlikely we could add to any previous investigation by the Council, or
- it is unlikely further investigation will lead to a different outcome, or
- we cannot achieve the outcome someone wants, or
- the council has taken appropriate action to remedy the complaint.

(Local Government Act 1974, section 24A(6) and 24A(7), as amended)

3. We normally expect someone to refer the matter to the Information Commissioner if they have a complaint about data protection. However, we may decide to investigate if we think there are good reasons. **(Local Government Act 1974, section 24A(6), as amended)**

How I considered this complaint

4. I reviewed the information provided by Mr and Mrs X, shared my draft decision with them and considered their comments.

What I found

5. Mr and Mrs X applied for planning permission to extend their property in 2018. From the outset they were concerned some of their documents contained

detailed images of their property's layout which may be used by criminals. They therefore asked the Council to withhold these documents from publication. The Council advised them to mark and documents they had concerns about as "case sensitive" and they would be considered only by the decision-maker and not made public.

6. The Council later confirmed that having spoken to its legal department all documents considered as part of the application must be published. It explained they could not proceed with the application without publishing the documents and asked how they wished to proceed. Mr and Mrs X were not happy with the response and felt it did not address their queries. They responded to the Council and expressly stated they did not want the documents to be posted online until they gave their written permission.

7. The Council published the documents a week later and proceeded to consider the application. At that point Mr and Mrs X were considering withdrawing the application and submitting a new application with amended documents which did not contain the images they were concerned about. When they challenged the Council it explained the documents had already been published and accepted it had uploaded them to its website without their permission.

8. Mr and Mrs X have amended versions of the documents concerned and have asked the Council to upload these to its website in place of the original versions. But the Council has now granted planning permission for the proposal and says the documents formed part of its consideration of the application and must remain public.

9. The Ombudsman will not investigate this complaint. The Council accepts Mr and Mrs X were told they could withhold documents from publication and that they did not consent to the documents being published. It has apologised to Mr and Mrs X, put in place training to avoid recurrence and amended its procedures. But it has declined to remove the documents or images as it forms part of the casefile which must be available for public scrutiny. This provides a suitable remedy for the complaint as the images concerned are freely available online through mapping apps and websites. If therefore any person wished to see the layout of their property they could do so even if the documents were withdrawn from publication.

10. It is not for us to say the Council must withdraw these documents from publication against its legal advice on the issue. If Mr and Mrs X believe the Council's actions amount to a breach of data protection they may complain to the Information Commissioner's Office (ICO). The ICO will consider whether the Council should remove the documents from its website and it may make an order to this effect; this is not something we could achieve.

Final decision

11. The Ombudsman will not investigate this complaint. This is because the Council has provided a suitable remedy for the complaint and it is unlikely we would recommend anything further for Mr and Mrs X. If they wish to pursue the matter Mr and Mrs X should take the case to the ICO.