

Complaint reference:
15 014 761

Complaint against:
Exeter City Council

The Ombudsman's final decision

Summary: There was fault in the way the Council initially considered the impact of a proposed development on the complainant's property. The Council agreed to a payment of £750 to the complainant to reflect the time, trouble and inconvenience he suffered.

The complaint

1. Mr X says the Council failed to consider the impact of a proposed development on his property before it granted planning permission for the development.
2. Mr X sought legal and professional advice on the status of his property. He wants a refund of the costs he incurred.

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'. She provides a free service, but must use public money carefully. She may decide not to start or continue with an investigation if she believes:
 - it is unlikely she would find fault, or
 - the fault has not caused injustice to the person who complained, or
 - the injustice is not significant enough to justify her involvement, or
 - it is unlikely she could add to any previous investigation by the Council, or
 - she cannot achieve the outcome someone wants, or
 - there is another body better placed to consider this complaint, or
 - it would be reasonable for the person to ask for a council review or appeal.

(Local Government Act 1974, section 24A(6))

How I considered this complaint

4. I considered the complaint and correspondence sent to the Ombudsman by Mr X and the Council. I made formal enquiries of the Council and considered its response and the information it provided. I discussed matters with Mr X on the telephone. I sent a draft decision statement to Mr X and the Council. I considered the non material minor amendment application the developer submitted.

What I found

5. The Council received and determined a reserved matters application for a major development of 200 homes close to Mr X's home. Mr X's home comprises two properties; one being his home and the other a detached log cabin which is let to tenants.
6. The developer proposed a dwelling in a plot adjacent to the cabin. The case officer was unaware of the cabin and so did not consider the development's proximity to the cabin. The flank wall of the development was proposed to be about 1 to 2.4 metres away from the patio area of the cabin. The window of the dining area of the cabin would be around 4.5 metres from the centre of the flank wall where it is 8.9 metres high. The bathroom window of the cabin would be 3.8 metres from the flank wall. However, it is obscure glazed which helps to maintain some privacy.
7. The Council's residential design guide refers to dwellings having comfortable use and enjoyment of habitable rooms, gardens and communal spaces. Where habitable rooms face onto a blank or largely blank wall of another building the guide suggests a minimum distance equal to twice the height of the blank wall as the appropriate separation distance.
8. Mr X complained to the Council when he became aware of the proximity of the proposed development to the cabin. In its response to his complaint, the Council accepted the proposed development's impact on the amenity of the main room within the cabin and on his enjoyment and use of the patio area was greater than it would normally expect to see.
9. The Council entered into discussions with the developer on the possibility of amending the scheme. Its complaint response to Mr X suggested the discussions were unsuccessful and there was nothing it could achieve for Mr X. Mr X therefore complained to the Ombudsman.
10. I proposed negotiations involving all parties as a means of settling the complaint. However the developer submitted a non-material amendment application before those discussions could take place.
11. This time the Council clearly considered the relationship between the proposal and Mr X's property. In fact, the planning application was primarily aimed at addressing the impact on Mr X's property. The case officer explained the changes in the proposal and provided reasons why the revised proposal reduced the impact on Mr X's property.

Was there fault by the Council?

12. I found fault by the Council because it had not considered the impact of the proposed development on the amenity of Mr X's property before it approved the reserved matters application.
13. However, the recently approved amended planning application is the one the developer will implement. Mr X may disagree with the Council's judgement but such disagreement does not mean there was fault in the decision. The Council is the decision maker but it must show reasoned justification for its decisions. Here, I am satisfied the Council properly considered the impact on the amenities of Mr X's property.

Injustice and agreed action

14. I cannot recommend a refund of the legal and professional fees Mr X incurred as he sought legal and professional advice after he complained to the Ombudsman.
15. However, I consider Mr X and his tenant suffered time, trouble and inconvenience to a degree beyond that which the Ombudsman finds reasonable. So I recommended a payment of £750 to Mr X. The Council agreed to pay the compensation to Mr X.

Final decision

16. I found fault by the Council. I closed the complaint because the Council agreed to pay a sum of compensation to Mr X to remedy his injustice.

Investigator's decision on behalf of the Ombudsman