

Appendix A: Complaints decided by the Local Government and Social Care Ombudsman year ending 31/03/2025

Reference	Category	Subcategory	Decided	Decision	Decision Reason	Remedy
23010416	Planning & Development	Other planning application	08/04/2024	Upheled	fault no injury	NA
23018946	Corporate & Other Services	Leisure and culture	30/04/2024	Closed after initial enquiries	No worthwhile outcome achievable by investigation	NA
23020020	Housing	Private housing disrepair	23/04/2024	Closed after initial enquiries	26B(2) not made in 12 months	NA
23020117	Housing	Allocations	24/04/2024	Closed after initial enquiries	Not warranted by alleged fault	NA
23021311	Corporate & Other Services	Access to information	14/05/2024	Closed after initial enquiries	Other Agency better placed	NA
24007284	Housing	Allocations	09/08/2024	Referred back for local resolution	Premature Decision - advice given	NA
24012271	Corporate & Other Services	Contracts and business matters	04/12/2024	Closed after initial enquiries	26(6)(c) Court remedy	NA
24017527	Planning & Development	Enforcement-householder	05/02/2025	Referred back for local resolution	Premature Decision - referred to Organisation	NA

Exeter City Council (23 010 416)

Category :[Planning](#) > [Planning applications](#)

Decision :**Upheld**

Decision date :**07 Apr 2024**

- [The complaint](#)

The Ombudsman's final decision:

Summary: Group X complained about the Council's decision to approve details of development they said were out of character for the local area. We found fault by the Council, but it did not affect its decision to approve the development details.

The complaint

1. Group X complained about the Council's decision to approve details of development because:
 - its report on the application was misleading;
 - some councillors voted to approve the application when they should not have been on the Planning Committee; and
 - it negotiated with the developer but not residents.
2. Group X also said the Council did not independently review their complaint as needed by stage 2 of its complaint procedure.
3. Group X said the development was out of character for the area. And noise, air pollution and traffic from the development would seriously affect their health and highway safety as nearby residents.
4. Group X wanted the Council to:
 - change the development, including reducing its scale;
 - ensure the developer complied with all planning conditions;
 - monitor the site during construction to minimise disturbance to residents; and
 - apologise to residents and pay compensation.

[Back to top](#)

The Ombudsman's role and powers

5. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word fault to refer to these. We consider whether there was fault in the way an organisation made its decision. If there

was no fault in how the organisation made its decision, we cannot question the outcome. (Local Government Act 1974, section 34(3), as amended)

6. Where we find fault, we must also consider whether that 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 significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
7. When considering complaints we make findings based on the balance of probabilities. This means that we look at the available relevant evidence and decide what was more likely to have happened.
8. If we are satisfied with an organisation'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)

[Back to top](#)

How I considered this complaint

9. I:
 - considered the complaint and supporting papers provided by Group X;
 - talked to the authorised representative of Group X, about the complaint;
 - considered the Council's report on the application and other relevant planning information available on its website;
 - watched and listened to the recording of the Council's Planning Committee when they considered the application;
 - asked for and considered the Council's comments and supporting papers about the complaint;
 - shared Council information with Group X; and
 - gave Group X and the Council an opportunity to comment on a draft of this statement and considered any comments received before making a final decision.

[Back to top](#)

What I found

Background

10. Most development needs planning permission from the council. An outline planning application seeks permission for development in principle. After gaining outline planning permission, developers need the council's approval to details of the development called 'reserved matters'. Reserved matters

concern access, appearance, landscaping, layout and scale of the development. Sometimes an outline application includes details of some reserved matters for approval. The council must approve all reserved matters before development starts.

11. Councils must decide applications in line with policies in their development plans unless material planning considerations indicate they should not. Material considerations concern the use and development of land in the public interest but not private matters. Examples of material considerations are traffic generation and the impact of development on neighbouring amenities. The developer's personal conduct and the view from peoples' homes and potential changes to house prices are not material planning considerations.
12. Councils publicise planning applications so people may comment on development proposals. Peoples' comments on development and land use grounds will be material planning considerations which the Council must take into account in deciding the application. Taking account of a representation does not mean the council must agree with it. Reserved matters applications are not planning applications, and councils do not need to publicise them but, in practice, some councils do.
13. A planning case officer may prepare a report assessing the development proposals against relevant policies and other material planning considerations. The report usually ends with a recommendation to approve or refuse the application. The courts have made clear that case officer reports:
 - do not need to include every possible planning consideration, but just the principal controversial issues;
 - do not need to be perfect, as their intended audience are the parties to the application (the Council and the applicant) who are well versed of the issues; and
 - should not be subject to hypercritical scrutiny, and do not merit challenge unless their overall effect is to significantly mislead the decision maker on the key, material issues.
14. Planning policies may pull in different directions, for example, promoting new housing development and protecting existing residential amenities. It is for the decision maker to decide the weight to be given to any material consideration in deciding an application. So, councillors at committee do not have to accept the recommendation in their officers' report. They may give different weight to the material planning considerations and so reach a different view and decision on an application.

What happened

15. The Council allocated land in its development plan for housing development. It also adopted a development brief ('the Brief') giving more detailed guidance about providing housing on the allocated land. The Brief was a material planning consideration in deciding applications for housing on the allocated land.
16. The Council granted outline planning permission for housing on part of the allocated land ('the Site'). Later, the Council received a reserved matters application ('the Application').
17. The Council publicised the Application and received many objections, including from Group X. While Group X were not against the new housing they objected to the proposed number of new homes on the Site (its housing density). Group X said the density was out of character with existing nearby homes and the new and existing homes would not integrate. Group X also said so many new homes would worsen traffic congestion and badly affect road safety for walkers and cyclists.
18. A Council planning officer prepared a report on the Application, recommending approval of the details ('the Report'). The Report referred to relevant planning policies, identified key planning issues for deciding the Application and summarised the comments received about the Application. The Report went to the Council's Planning Committee. An objector spoke at the committee meeting, putting forward peoples' main concerns about housing density and how it would impact the area. Councillors, some of whom asked questions and talked about the Application, decided by a majority to approve the Application. The Council issued a decision notice approving the Application, which included planning conditions to regulate and control the development.
19. Group X complained about the decision saying councillors had been misled about the development. Remaining dissatisfied with the Council's complaint responses, Group X came to the Ombudsman.

Consideration

Introduction

20. We are not an appeal body. Our role is to consider whether there is evidence the Council acted with fault and, if so, whether that fault affected its decision and caused those complaining significant injustice. Group X's complaint correspondence showed they had many concerns with the Council's decision making on the Application. I carefully considered all the information provided by Group X. However, this statement does not, and does not need to, address every detailed point raised by Group X. My investigation considered the three issues set out in paragraph 1 to this statement. And, for the issue about the

Report (first bullet point to paragraph 1), my focus was Group X's concern about housing density on the Site.

The Report: housing density

21. A key planning issue in deciding the Application, and for Group X, was the scale of the housing development. The outline planning permission was for "residential development" and did not include any housing number. The outline planning application had included a plan showing how the Site might be developed, which included the possible number of new homes. As an 'illustrative plan', it was not approved as part of the outline planning permission. A Council planning policy gave a figure for the likely number of new homes for all the allocated land ('Policy One'). The Council pointed to the housing assessments that preceded the land allocation. These assessments showed the allocated land might provide 50 to 60 dwellings per hectare ('dph'). The Brief said developing the allocated land at an average net density of less than 30dph was unlikely to be an efficient use of land. Another Council planning policy ('Policy Two') referred to in the Report, said that housing development:

"...should achieve the highest appropriate density compatible with the protection of heritage assets, local amenities, the character and quality of the local environment and the safety and convenience of the local and trunk road network."

22. The Application proposed significantly more new homes than shown on the outline plan. The Report identified 'quantum' (the number of new homes/density of the development) as a key consideration in deciding the Application. The Brief and the Report both set out density (dph) figures for nearby housing, which varied from less than 30dph to almost double 30dph. The Report also referred to the density of sites with planning permission but not yet built. The Site density was significantly higher than 30dph. The Report referred to the Brief saying it set out a minimum density of 30dph. The Report also said it was unlikely the allocated land would now provide all the houses referred to in Policy One.
23. Group X's main points about density were the Report failed to fully reflect what the Brief said and failed to include the net housing density for the Site. I address these two points separately.
24. Group X pointed to the Brief saying 30dph was the 'average density' expected for the allocated land, but the Report referred to 30dph as a 'minimum'. The Report also omitted what the Brief said about the average density of recent developments and varying housing density within the allocated land. These other density figures were lower than proposed for the Site. The Council said the Brief effectively set a minimum density in referring to the efficient use of land, and Policy Two supported this. The Brief provided density figures from

when it was adopted as policy and set no maximum density. Officers had reported the Brief's varying densities to councillors at the Planning Committee meeting.

25. The Report referred to the Brief and Policies One and Two about housing on the allocated land and the effective use of land. The officer presentation to the Planning Committee provided density figures from the Brief and those for proposed nearby development. The officer presentation also commented on the Brief referring to varying densities within the allocated land. Councillors, in discussing the Application, showed they understood there was a difference between the Brief's density figures for the allocated land and that proposed by the Application. Reading the Report as a whole and taking account of the officer presentation and councillors' discussion, I did not find the Council at fault in referring to 30dph as a 'minimum' density. I also found no fault in the Council's references to nearby land with housing planning permission as part of the surrounding area.
26. Group X pointed to the Report saying the dph figure for housing on the Site was the "gross" density. The Report did not describe other density figures in the Report, including the Brief's 30dph, as either 'gross' or 'net' but, they were all 'net'. The Council said use of the gross rather than the net figure for the Site in the Report and at the Planning Committee was an error.
27. A 'gross' density figure uses the whole site whereas the 'net' figure uses land for housing and excludes, for example, roads and green spaces within the site. A 'net' dph housing density figure is therefore higher than its 'gross' figure. In this case both the gross and net figures for the Site were significantly higher than the Brief's 30dph.
28. As the Report used 'gross' to refer to the proposed housing density on the Site, readers would likely assume the other density figures were 'gross' too. However, they would not be comparing like with like but the Site's gross figure with various net figures. The scale of the development and the density of the proposed housing was a key issue in deciding the Application. It was also of great concern to Group X. I therefore found the failure to provide the net figure for the Site or to clarify that other figures in the Report and presented to the Planning Committee were net, was fault.
29. So, was that fault more likely than not to have affected the Council's decision to approve the Application. While higher than the stated gross figure, the Site net figure did not noticeably exceed the range of densities in the Brief, Report and presented at the Planning Committee. What did not change was the number of proposed homes, which number also represented a significant increase from that shown on the outline illustrative plan. The discussion at the Planning Committee showed councillors considered the impact of the increased housing number. For example, councillor comments covered

housing design and the availability of off-street parking. The discussion also indicated some councillors likely gave more weight to the Brief and others were likely more weighted to the provision of the increased number of new homes. Officers also advised the Planning Committee that to refuse the Application needed planning grounds. This meant identifying what planning harm the proposed number of houses caused that would justify refusal.

30. I recognised the decision to approve the Application was not unanimous. However, the discussion at the Planning Committee showed councillors understood they were dealing with more proposed houses compared to the outline illustrative plan. And, given the size of the Site, that number of houses would provide a density significantly higher than the Brief's 'average' or 'minimum' dph figure. The Council's officers had pointed councillors to the need to identify planning harm arising from the Application proposal to justify refusing approval of the details. Considering the evidence about the Planning Committee's decision making, I did not find that knowledge of the Site's net dph figure would more likely than not have led them to a different decision. I therefore found the fault I identified at paragraph 28 did not cause injustice to Group X as they would be in the same position with the Application being approved.

The Report: other matters

31. Group X raised other points about the Report. I found the Council's complaint responses addressed these points in a suitable and proportionate manner. I therefore only commented briefly on these points where I considered it appropriate to do so.
32. Two points, about, first, inconsistencies and second, a lack of detail in the Report were dealt with at the Planning Committee before councillors decided the Application. Reading the Report as a whole, I saw no evidence the inconsistency affected the assessment of the Application. The detailed point also arose at the Planning Committee with both councillors and the Council's officers commenting and referring to the Report. I therefore could not find the Council failed to address these two points before deciding the Application.
33. Three points concerned Group X's view the Council failed to have due regard to relevant matters. The Report referred to all three matters and two were considered during the officer presentation and councillors' discussion on the Application. I therefore could not find the Council failed to consider these matters before deciding the Application.
34. I recognised Group X's dissatisfaction with the Report, and they considered the Council should have given more attention to some issues. However, having carefully considered Group X's various points, both individually and

cumulatively, I did not find fault in the Council's handling of the other points raised by Group X about the Report.

Planning Committee Councillors

35. Group X referred to Government Guidance preventing councillors from membership of both a council's Executive and Planning Committees. They said two such councillors were present and voted to approve the Application. This was unfair as the vote was not unanimous and the two councillors' votes might have affected the decision to approve the details.
36. There is no law or statutory Government guidance preventing councillors being members of both Executive and Planning Committees. And the Council's constitution (its working rules) does not contain any such prohibition. I understood Group X referred to advice given by the Local Government Association in their publication, *Probity in Planning* ('the guide'). The guide advises the councillor with responsibility for planning matters on an Executive Committee to normally exclude themselves from the decision-making planning committee. The aim being to avoid any perception of a conflict of interest or predisposition when considering specific planning applications. The guide also makes clear it does not provide legal advice and councillors must comply with their council's constitution, including the 'councillors code of conduct'.
37. If Group X had concerns about any councillor at the Planning Committee meeting, they could have complained about their conduct to the Council. The Council signposted Group X to its councillors' complaints procedure in its stage two complaint response. However, given the status of the guide, I did not find the Council acted with fault even if one of its Planning Committee councillors also had responsibility for planning matters on its Executive Committee.

Contact with the developer

38. Group X said the Planning Committee did not visit the Site or include them in discussions about planning conditions.
39. The Council said its planning case officers visited sites when assessing applications, but its Planning Committee did not routinely visit sites. (The Planning Committee made three visits during the previous two years.) When publicising applications, it made clear it could not engage with individual objectors. However, residents' comments on applications might lead it to propose conditions to address concerns. Conditions had to comply with policy and guidance and were not subject to public consultation. The Report set out proposed conditions so councillors could discuss them, if appropriate, should they decide to approve the Application.

40. There is no legal requirement for the Council to visit a proposed development site before deciding planning applications. And it is common practice for councils, when publicising applications, to say they will not discuss peoples' representations with them. Here, although for reserved matters approval, the Council publicised the Application, so residents could comment. And the Report provided evidence the Council took account of residents' representations, before it decided the Application. I recognised Group X's frustration at not being more involved in the Council's decision making. However, I did not find it acted with fault because the Planning Committee did not visit the Site or otherwise meet with residents while processing the Application.

41. There is no legal requirement to publicise proposed planning conditions and it is not common practice for councils to do so. The Government's Planning Practice Guidance (PPG) says it is good practice to keep planning conditions to a minimum and early contact with developers can assist in achieving this. The Government's National Planning Policy Framework (NPPF) also says councils should approach decision making 'in a positive and creative way and work proactively with developers to approve applications for sustainable development where possible'.

42. The law, PPG and NPPF mean the Council will likely engage with developers when processing their applications. I recognised Group X's dissatisfaction with their seeming different treatment to that given to the developer. However, I did not find the Council at fault because it engaged with the developer in processing the Application but did not consult Group X about proposed planning conditions.

Complaint handling

43. The Council has a formal two stage complaints procedure. At stage one, the department complained about seeks to resolve matters. And, if not satisfied with a stage one response, people may ask for "an independent review by a senior officer". Group X said the Council's review of their complaint was not independent because the stage two response came from a senior Council officer in the department complained about.

44. I recognised that people might view complaint responses from the department complained about as lacking independence. However, it is for councils to decide how they organise their own complaint handling procedures. And there may be benefits in replies from the department complained about as it will have knowledge and experience in the relevant subject matter. Here, in line with the Council's procedure, a senior Council officer reviewed Group X's complaint. The Council confirmed that officer had no role in assessing the Application or preparing the Report. I did not find fault here. And Group X

have now used their right to complain to the Ombudsman, who is independent of the Council.

[Back to top](#)

Final decision

45. I completed my investigation finding there was no fault causing significant injustice in the Council's decision making.

Investigator's decision on behalf of the Ombudsman