

The Ombudsman's final decision

Summary: Mr X complained about the Council's failure to notify him about his neighbour's planning application, which he believes will affect his amenity. There was fault in the way the Council made its decision, for which it has already apologised. The fault made no difference to the outcome of its planning decision.

The complaint

1. Mr X complained about the Council's failure to notify him about his neighbour's planning application. The Council accepted it was at fault and has offered compensation for Mr X.
2. Mr X did not accept the Council's offer, because he did not feel it adequately compensated for the impact the development will have on his amenity.

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. 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 read the complaint and discussed it with Mr X's representative. 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.
6. I gave the Council and Mr X an opportunity to comment on an earlier draft of this decision and I took account of the comments I received.

What I found

Planning law and guidance

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

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8. Planning considerations include things like:
 - access to the highway;
 - protection of ecological and heritage assets; and
 - the impact on neighbouring amenity.
 9. 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.
 10. Councils may impose planning conditions to make development acceptable in planning terms. Conditions should be necessary, enforceable and reasonable in all other regards.
 11. Planning enforcement is discretionary and formal action should happen only when it would be a proportionate response to the breach. When deciding whether to enforce, councils should consider the likely impact of harm to the public and whether they might grant approval if they were to receive an application for the development or use.
 12. Regulations set out the minimum requirements for how councils publicise planning applications.
 13. For major development applications, councils must publicise the application by:
 - a local newspaper advertisement; **and** either
 - a site notice; **or**
 - serving notice on adjoining owners or occupiers.
 14. For all other applications, including minor developments, councils must publicise by either:
 - a site notice; **or**
 - serving notice on adjoining owners or occupiers.
 15. As well as regulatory minimum requirements, councils must also produce a Statement of Community Involvement (SCI). The SCI sets out the Council's policy on how it will communicate with the public when it carries out its functions. It is not unusual for SCI policy to commit councils to do more than the minimum legal requirements, for example, to put up a site notice **and** to serve notice on adjoining owners or occupiers.
 16. This Council's SCI says that for minor developments, it will publicise applications by either:
 - a site notice; **or**
 - serving notice on adjoining owners or occupiers.

Background

17. Mr X's neighbour submitted a planning application. It was for development at the rear of the neighbour's home.
18. The Council accepts it was at fault because it intended to send Mr X a notification letter but did not do so. The Council says it has investigated what happened and

found that the mistake was due to a simple error. There was a plan marked with properties to be notified, including Mr X's, but no letter was sent.

19. Before Mr X came to the Ombudsman, the Council had accepted fault, apologised and offered compensation.
20. I have checked the Council's records, looked at the plans and the case officer's report. The case officer report included:
 - a description of the proposal and site;
 - a summary of relevant planning history;
 - comments from neighbours and other consultees;
 - relevant planning policy and guidance;
 - an appraisal of the main planning considerations, including impact on amenity and the nature of the site; and
 - the officer's recommendation to approve the application, subject to planning conditions.

My findings

21. The application is for minor development. Under its SCI, the Council has the option of using either a site notice or neighbour notification letter. The Council says it normally uses neighbour notification letters, but did not send one to Mr X. This is fault.
22. Whenever we find fault, we need to determine whether it caused an injustice to the complainant. In relation to a planning decision, the first step in this process is to ask whether the fault made any difference to the outcome. If we find it is likely the outcome would have been different, we then assess what happened with what would have happened to measure the injustice.
23. In this case, I can see the case officer took account of the material planning considerations, including the impact the development would have had on Mr X's home and amenities. Mr X lost his opportunity to comment and is justifiably disappointed. I think the apology the Council has already given is an adequate remedy for the fault I have found.
24. Even if Mr X had been notified and sent his concerns/objections to the Council, I cannot say the outcome would have been different. Because of this, I cannot say Mr X was caused a significant injustice that has not already been remedied.

Final decision

25. There was fault in the way the Council made its decision, but it did not make a difference to the outcome of the planning decision. The apology the Council has given is an adequate remedy for the disappointment caused to Mr X for its failure to notify him.

Investigator's decision on behalf of the Ombudsman