

## **The Ombudsman's final decision**

Summary: Mr and Mrs X complain the Council is at fault for the way it determined their neighbour's planning application. The Council failed to evidence its decision making and failed to follow its complaint process. However, on the balance of probabilities I do not consider the Council's decision or handling of Mr and Mrs X's complaint would have been different had the faults not occurred. The Council has agreed to pay Mr and Mrs X £200 to recognise the uncertainty caused by the fault identified and review its procedures.

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## **The complaint**

1. Mr and Mrs X complain the Council is at fault for the way it determined their neighbour's planning application. In particular, they say the Council:
  - Failed to consider local and national planning policies.
  - Failed to properly assess the impact of the development on their property
  - Based its decision on inaccurate drawings.
  - Failed to follow its complaints process.

## **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'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. 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**

4. I have spoken with Mr and Mrs X.
5. I have considered the original planning application, the planning officer's report and decision notice. I have also considered the Council's response to my enquiries.

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6. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we will weigh up the available relevant evidence and base our findings on what we think was more likely to have happened.
  7. Mr and Mrs X and the Council have had an opportunity to comment on my draft decision.

## **What I found**

### **The Law**

8. Planning controls the design, location and appearance of development as well as its impact on public amenity. Planning controls are not intended to protect private rights or interests. A council may grant planning permission subject to planning conditions to control the use or development of land.
9. When a council decides on a planning application it can only take certain issues into account. These are often referred to as “material planning considerations.” Examples of material planning considerations include:
  - Local and national planning policies.
  - Loss of sunlight
  - Overshadowing or loss of outlook
  - Highway issues
10. Councils cannot consider some matters which are often raised but are not material planning considerations. Examples of these include:
  - Private disputes between neighbours
  - Ownership disputes over rights of way
  - Loss of a view

### **What happened**

11. Mr and Mrs X’s neighbour applied to the Council for planning permission to build a two-storey side extension, and single rear extension. Mr X contacted the Council. He said the submitted plans had no dimensions so he could not tell how close the extension would come to his property. He said he trusted the extension would not have a harmful impact on his property.
12. Mr X then spoke to the Council. Mr X says an officer assured him the development would have no adverse impact on his property. Mr X later emailed the Council saying the extension would result in a loss of light in his front bedroom as it extended beyond his bedroom window.
13. The Council visited the applicant’s address. Following the visit the Council granted planning permission for the extension. In its report, the Council said it did not consider the extension would harm the character of the surrounding area. While the rear extension exceeded the Council’s usual permitted depth for rear extensions, it remained within the rear building line of Mr and Mrs X’s property so the Council considered it acceptable.
14. The Council said the side extension did not adversely impact the street scene, as it was set back one metre from the front of the applicant’s house, within its guidelines for side extensions. The Council accepted Mr and Mrs X’s property was to the north, and the extension would cast a shadow. However, it said the

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side extension did not extend beyond a 45-degree line from Mr and Mrs X's front facing window. The Council did not consider the extension would have a significant impact on Mr and Mrs X's property.

15. Following approval from the Council, Mr and Mrs X's neighbour began building the extension and Mr and Mrs X raised concerns with the Council. Mr and Mrs X said the extension was overbearing, and would have an adverse impact on their property. They said the approval breached several local and national planning policies.
16. The Council met with Mr and Mrs X at their home. Mr and Mrs X said they did not believe the extension was subordinate to the applicant's existing home, and caused them overshadowing, loss of view and privacy. Mr and Mrs X said the approved plans did not accurately represent their property. Mr and Mrs X also told the Council the applicant had started work without discharging a pre-commencement condition over the suitability of materials they were using. Mr and Mrs X say the Council then stopped construction on the extension pending further enquiries. Mr and Mrs X also say when they raised concerns over breaches to local and national planning policies, the Council said it did not pay attention to the policies.
17. Following the meeting the Council emailed Mr and Mrs X. It accepted that its report did not give enough detail about the impact of the extension on Mr and Mrs X's property, however it still considered the development acceptable. The Council said it should have mentioned how Mr and Mrs X's bedroom benefited from rear facing windows as well as the front facing window impacted by the extension. It said while the detail was not in the report, it had been able to properly assess the impact of the extension through the site visit it made before making the decision. It had also reviewed its records of Mr and Mrs X's property from a planning application they had put in previously.
18. The Council said it had contacted the applicant about the undischarged condition. It also recognised the distress the extension was causing Mr and Mrs X. It said it could ask the applicant to consider changing the extension, though this would be on a goodwill basis rather than a planning requirement.
19. Mr and Mrs X remained unhappy and made a formal complaint to the Council. The Council did not uphold Mr and Mrs X's complaint. It said there was no requirement for the applicant to accurately depict Mr and Mrs X's property on the plans. It said it had accurately assessed the impact of the extension through a site visit and the plans for Mr and Mrs X's extension. It repeated that Mr and Mrs X's bedroom was served by two windows so the impact of the extension on the front window was mitigated. It accepted that its report did not reflect the impact of the extension on Mr and Mrs X's front facing window, and had referred to an oblique window at the front of their property rather than the window impacted by the extension. It apologised for this and the lack of detail in its report.
20. The Council also responded to Mr and Mrs X's other points of complaint. It said the fact other properties in the area had large gaps between them did not mean the Council's decision was wrong. The Council also said its officer would not have said the extension would not impact Mr and Mrs X's property, as the Council was still considering the application at that point. The Council rejected Mr and Mrs X's claims it had said it ignored local and national policies.
21. Mr and Mrs X wrote to the Council again asking for it to consider the complaint at stage two. They said the Council had no policy for rooms with two windows and it did not mention this in its report. At the same time a solicitor acting on behalf of

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Mr and Mrs X asked the Council to revoke the approval as it had ignored several local and national planning policies.

22. The Council said it had made its decision in line with its policy on domestic extensions. It was satisfied it had correctly assessed the application and it was a matter of judgement. The Council said Mr and Mrs X had not raised any new issues so it would not consider the complaint further. It referred Mr and Mrs X to the Ombudsman.

### **My findings**

23. Mr and Mrs X have cited several reasons why they believe the Council should not have approved their neighbour's planning application. The Ombudsman is not an appeal body. It is not for the Ombudsman to decide whether we would have granted planning permission, but whether the Council followed the correct procedures in deciding the application.
24. Mr and Mrs X say the Council failed to consider several local and national planning policies in deciding the application. The officer report and planning decision both specify the policies the Council considered. In particular local policies about the character of the proposal, and its impact on the local street scene. The Council also considered the National Planning Policy Framework (NPPF).
25. Having consulted these policies the Council decided the proposal would not adversely impact the street scene or character of Mr and Mrs X's area. Planning is a matter of judgement, where the Council weighs different aspects of local and national guidance before coming to a decision. Mr and Mrs X disagree with the Council's judgement the proposal does not adversely impact the area. This does not make the Council's decision wrong. The Council weighed local and national planning policies and came to a decision. There is no evidence of fault in how the Council considered these policies, and no evidence to support Mr and Mrs X's claim the Council said it ignored these policies. Where there is no fault in how the decision was made, I cannot question the merits of the decision itself. It is a professional decision the Council was entitled to take. The Council is not at fault.
26. Mr and Mrs X also complain the applicant's plans did not accurately represent their property and so the Council based its decision on inaccurate information. There is no obligation for the applicant to represent Mr and Mrs X's property on their plans, so the Council was entitled to accept the plans as submitted. However, the Council still had a duty to consider the impact of the proposal on Mr and Mrs X's property.
27. Mr and Mrs X say the rear part of the extension is too large and a security risk. The officer's report, and site visit photographs, show the Council properly considered the impact of the rear extension on Mr and Mrs X's property. The Council accepted the rear extension was larger than its guidelines, but this was mitigated by Mr and Mrs X's own rear extension. While the extension was also slightly higher than the Council's preferred height of 3 metres, this was mitigated by a pitched roof. This meant the extension was below 3 metres in height at the boundary with Mr and Mrs X. The Council is not at fault for the way it considered the impact of the rear extension on Mr and Mrs X's property.
28. Following Mr and Mrs X's complaint the Council accepted its officer's report was not detailed enough in its consideration of the side extension's impact on Mr and Mrs X's property. However, the Council said it properly considered the impact through a site visit and by reviewing a previous planning application from Mr and

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Mrs X themselves which showed they had previously extended their property towards the boundary and the impacted bedroom had a rear window, which provided another source of light.

29. The Ombudsman's view is councils should be able to evidence their decision making through detailed officer reports and any site visit notes. The Council officer did not make site visit notes. Having reviewed the officer report, I do not consider it adequately evidences the Council's assessment of the impact of the side extension on Mr and Mrs X's property.
30. The report fails to accurately consider the impact of the side extension on Mr and Mrs X's front bedroom window. It fails to explain that the Council considered Mr and Mrs X's rear window reduced the impact of a loss of light from the extension on their property. The report also fails to consider that Mr and Mrs X's had previously extended their property closer to the boundary. The Council is at fault.
31. The Council says had the fault not occurred it would still have made the same decision. It says the loss of light from the side extension is mitigated by Mr and Mrs X's rear bedroom window. Mr and Mrs X say the side extension is over bearing and they have also lost a view. Loss of view is not a material planning consideration. The Council is entitled to consider the rear bedroom window when assessing the loss of light to the front window. It is also entitled to consider that Mr and Mrs X previously extended towards the boundary themselves. Considering all these factors, while fault by the Council has resulted in uncertainty for Mr and Mrs X, on the balance of probabilities I do not consider there is enough evidence to show the Council would have come to a different decision had the fault not occurred.
32. Mr and Mrs X also complain the Council failed to follow its complaints process. The Council's complaints process offers three stages of complaint handling. When Mr and Mrs X asked the Council to consider their complaint at stage two, the Council responded. However, it also said it was refusing a stage two investigation as it considered there was nothing further it could add. The Council's complaint process does not specify a process for not considering a complaint at stage two or three because it has nothing to add. The Council failed to follow its published complaints process. However, had the Council followed the process I do not consider its response would have changed and Mr and Mrs X would still have complained to the Ombudsman. I do not consider Mr and Mrs X have suffered an injustice because of the Council's failure to adhere to its complaints process.

### **Agreed action**

33. The Council has already apologised to Mr and Mrs X for its failure to evidence its decision making in the officer's report. It has agreed, within one month, to pay Mr and Mrs X £200 to recognise the uncertainty caused because of the identified fault.
34. Within three months, the Council has agreed to:
  - Consider the Ombudsman's guidance note on recording planning decisions and review its procedures to ensure it properly evidences its planning decisions in officer reports.
  - Review its complaint handling processes to ensure it follows its published complaints procedure.

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## **Final decision**

35. There was fault leading to injustice. The Council has accepted my recommendations. I intend to complete my investigation as I consider that a suitable remedy.

## **Investigator's decision on behalf of the Ombudsman**