

10 January 2019

**Complaint reference:**  
18 009 459

**Complaint against:**  
London Borough of Havering

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

Summary: Mr X complained about the Council's decision to approve his neighbour's extension, which he fears may affect his private access rights. There was no fault in the way the Council made its decision, and private rights over land are not material planning considerations.

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## **The complaint**

1. Mr X complains that the Council approved a planning application that might affect his access over a shared private driveway.

## **The Ombudsman's role and powers**

2. 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*)
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 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.
5. 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**

6. 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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7. Planning considerations include things like:
    - safe access onto the public highway;
    - protection of ecological and heritage assets;
    - the design and materials of buildings; and
    - the impact on neighbouring amenities, like privacy, loss of light, privacy or overbearing impact.
  8. Planning considerations do not include things like:
    - views over another's land; or
    - private legal rights, such as access over land.
  9. 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.
  10. Before councils consider planning applications, they must check what information they are likely to need. When they are satisfied they have the information they need to consider an application, they 'validate' the application and the planning process begins. There are national and local validation lists.
  11. The national list includes information that must be provided, which is:
    - a completed application on a standard form;
    - scaled plans to show the location of the site; and
    - the correct fee.
  12. Also, and where considered necessary:
    - a Design and Access Statement; and/or
    - an Environmental Impact Assessment.
  13. Local validation lists may set out what each individual council might require if necessary to decide an application. Local lists include things like:
    - existing and proposed elevations;
    - cross-section drawings; and
    - floor and ground levels.

### **Background**

14. Mr X shares an access drive with his neighbour, that runs from the public highway to separate garages.
15. The neighbour submitted a planning application to build a side extension that would incorporate their garage.
16. Mr X objected to the proposal because he was concerned his neighbour might encroach on his land or obstruct access to his garage.
17. Mr X says the case officer who first visited the site, decided more information was required. However, this officer was replaced by another before a decision was made. Mr X says this change happened without his knowledge and he later discovered the second officer had not required further information, but had recommended approval of the plans.

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18. The case officer's report shows Mr X's concerns about his private rights were considered, and the officer stated that these were not planning considerations. The case officer considered the impact the new extension would have on Mr X's amenity, but did not consider the impact would be significant.
  19. A senior officer considered the case officer's recommendation and granted planning permission using delegated powers.
  20. Mr X was not happy about what had happened and complained to the Council before coming to the Ombudsman. He complains that:
    - the approved plans do not include measurements, so the neighbour could build in a different location and make access to his garage difficult;
    - the first case officer had asked for changes to the front canopy to the side extension, but only the side of the canopy was altered;
    - the Council did not warn Mr X that there were time limits for him to challenge its decision by way of judicial review.

### **My findings**

21. Our role is to review the process by which decisions are made. It is only where we find fault in the decision-making process that we go on to consider whether an injustice was caused to the individual complainant.
22. In this case I can see the Council gave Mr X an opportunity to comment before making its decision. It considered the plans and relevant planning policy. This is the process we would expect and so I find no fault in the way it made its planning decision. Mr X's concerns were related to his private rights, but the Council cannot give any weight to private rights when making its planning decisions.
23. In giving its planning approval, the Council is not saying the developer is legally entitled to build on the land, regardless of the private rights of other individuals. Planning decisions can only relate to planning matters, such as whether the development is acceptable in terms of planning policy, acceptable design, appropriate use of land and other planning matters.
24. I will now comment on the specific points Mr X raises.

### **Plans do not include measurements**

25. The neighbour complied with the national planning validation requirement by including a scaled location plan. The local validation list requires that plans and drawings are drawn to either 1:50 or 1:100 scale and include a scale bar or key dimensions.
26. The plans provided meet these requirements, so I find no fault. They are drawn to the required scale and include key measurements, from which other dimensions can be measured.
27. Mr X is concerned his neighbour might not build in accordance with plans. If this happens, he can contact the Council's planning enforcement officers, who may check what is built against approved plans.

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28. If the Council had found a breach, it would have been for it to decide what action, if any, was necessary to protect the public interest. However, we should remember that the Council's planning enforcement powers will always relate to protection of the public in terms of planning considerations. These include things like impact on privacy, overlooking, and loss of light. Councils are not expected to take enforcement action to protect private legal rights, such as private access rights.

#### **Differences between case officers**

29. Mr X is unhappy because, after speaking to the first case officer, he expected more information would be required that might protect his private rights.
30. Planning officers are obliged by their code of conduct to give their own professional opinion when advising the decision-making authority. They are not bound to follow the opinions expressed by others. It is up to each individual officer to decide whether, in their own judgement, they have enough information to make a recommendation.
31. The second officer considered the application plans and other information provided were sufficient, and this opinion was accepted by the senior officer who approved the application. The Council has followed the process we expect and so I find no fault.

#### **Failure to give legal advice**

32. Mr X complains the Council did not advise him of legal time limits for judicial review challenges when responding to his complaint.
33. The Council is under no obligation to provide legal advice to Mr X, so I find no fault.

#### **Final decision**

34. I completed my investigation as there was no fault in the way the Council made its decision.

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