

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

Summary: Mr B complained about the Council's handling of an application for prior approval for permitted development. He said the Council did not publicise the application properly or address his objections before granting approval. There was no fault by the Council.

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## **The complaint**

1. Mr B complained about the Council's handling of an application for prior approval for permitted development. He said the Council did not publicise the application properly or address his objections before granting approval.

## **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. 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 considered:
  - Mr B's complaint and the information he provided;
  - documents supplied by the Council;
  - relevant legislation and guidelines; and
  - the Council's policies and procedures.
6. Mr B and the Council had the opportunity to comment on a draft decision. I considered comments received before making my final decision.

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## What I found

### Legislation and guidance

7. Some developments benefit from a grant of planning permission from central government. Such permission, permitted development, does not need a full planning application. The Town and Country Planning (general permitted development) Order 2015 sets out the different classes of permitted development.
8. Schedule 2, Part 6, Class E is for development that is reasonably necessary for forestry purposes, consisting of—
  - works for the erection, extension or alteration of a building;
  - the formation, alteration or maintenance of private ways;
  - operations on that land, or on land held or occupied with that land, to obtain the materials required for the formation, alteration or maintenance of such ways;
  - other operations (not including engineering or mining operations).
9. To be eligible for these permitted development rights, each class has associated limitations and conditions proposals must comply with. Conditions for permitted development under Class E include:
  - where the council gives the applicant notice prior approval is required, the applicant must display a site notice on or near the land on which the proposed development is to be carried out, leaving the notice in position for not less than 21 days in the period of 28 days from the date on which the council gave the notice to the applicant.
10. Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all councils in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity.

### What happened

11. This chronology includes key events in this case and does not cover everything that happened.
12. Mr B is a trustee for a section of woodland, Wood 1. Wood 1 is beside Wood 2. The woodland is an area of outstanding natural beauty.
13. The owners of Wood 2 applied for a felling and thinning licence. They submitted a woodland management plan to Forestry Commission England. The plan identified risks to the Wood, including the presence of priority species, and how they would mitigate those risks. The plan included their woodland management strategy. The Forestry Commission England granted them a felling licence in March 2020.
14. In November 2020, the owners of Wood 2 applied for prior approval to build a structure for timber and equipment storage and a track for access and timber extraction in the wood. The application included a copy of the woodland management plan and their felling licence.
15. Mr B raise objections about the development with the Council. His concerns were about:
  - disturbance to wildlife, flora and fauna;
  - traffic and access;
  - business use; and
  - the size of building.

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16. The Council wrote to the owners of Wood 2 in December 2020. It told them they needed prior approval for the siting and appearance of the proposed building. It said this it had concerns about the size of the proposed building.
  17. The Council told the applicants they would need to display a planning notice, giving details of the proposed development, on or near the site where it could be seen by members of the public for 21 days.
  18. The applicants sent the Council changed plans which reduced the size of the building and a picture of the planning notice in position.
  19. In January 2021, Mr B wrote to the Council to reassert his objections. He asked if the Council agreed the application in principle, could it do so with conditions to restrict the hours of work.
  20. In total, the Council received nine objections to the planning application and one letter of support. The Council consulted with Devon Wildlife Trust, it made no comment.
  21. The Council determined the planning application under delegated authority. The officer explained in the report because the application was permitted development, they could only consider matters about the sitting and appearance of the proposed building. The delegated officer's report reviewed:
    - the application;
    - relevant policies;
    - responses from its consultations;
    - objections to the development; and,
    - material planning considerations.
  22. They advised they could not consider:
    - the concerns raised about traffic flow because the proposal was permitted development; or,
    - the restrictive covenants because they were not a material planning consideration.
  23. The officer found the size of the building justified given its proposed use. The officer noted the building would be situated in dense woodland and would not be visible to the public. Therefore, they decided, the building would not impact on the character or appearance of the area of outstanding natural beauty. The officer also decided any minor impact on wildlife caused by the proposed development would be mitigated by the woodland management plan. In conclusion, the report advised the development would not have a significant detrimental impact on the character or appearance of the area. The designated officer recommended the Council granted prior approval.
  24. The Council granted prior approval for the development in March 2021.

### **Analysis**

25. The Ombudsman is not an appeal body. We look for fault in the process by which councils make decisions, and do not criticise their judgements if there is no fault.
26. The Council followed the correct procedure for the prior approval application. It asked for evidence the applicants had displayed a site notice, which it received. The Council received nine objections, including from Mr B, which evidences people were aware of the application.

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27. The Council's role was to consider the siting and appearance of the proposed building and track under the prior approval procedure. The Council considered the application; national and local planning policies; representations from consultees and the public; and material planning considerations, including the impact the development would have on the surrounding area and its wildlife. It was for the Council to decide the weight to give to the material planning considerations.
28. The Council decided to grant prior approval. This is a decision the Council was entitled to make. I did not find any evidence of fault in how it reached this decision and so I cannot question its merits.

### **Final decision**

29. I have completed my investigation and do not uphold Mr B's complaint.

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