

Complaint reference:
16 019 117

Complaint against:
East Devon District Council

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr X's complaint on behalf of himself and five local residents. We are unlikely to find fault in the way the Council decided to grant planning permission for up to forty homes on two sites near to where he lives. Also the injustice he says he will suffer because of ten more homes built across the two agreed development sites is not sufficient to warrant an investigation.

The complaint

1. Mr X complains on behalf of himself and five local residents that the Council granted planning permission for up to forty homes on two sites near to where he lives. He says this is contrary to the adopted local plan which allocates only thirty homes for the sites.

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. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault
 - the injustice is not significant enough to justify our involvement

(Local Government Act 1974, section 24A(6), as amended)

How I considered this complaint

4. I considered the information provided by Mr X, including the Council's responses to his complaint. I have also considered information available on the Council's website.
5. Mr X commented on the draft version of this decision.

What I found

6. By law, planning applications must be decided “in accordance with the Local Development Plan unless material considerations indicate otherwise” (***Planning and Compulsory Purchase Act 2004, Section 38(6)***). The Local Development Plan is the collective term for the Council’s adopted planning policies. Material planning considerations are reasons, relating to land use, which the Council may consider when reaching its decision.
7. The effect of the legislation is that if a proposal accords with policies in the Local Plan, it is likely to be approved unless other considerations, singly or cumulatively, weigh against it. Conversely, if a proposal is contrary to the Local Plan, and nothing significantly weighs in its favour, it is likely to be refused.
8. Two development sites were earmarked in the Council’s local plan for thirty new homes. This plan was adopted by the Council in 2016. Before this the sites were not considered suitable for development.
9. In 2015 the Council’s planning committee considered an application for outline planning permission for up to thirty six homes on one of the sites. The case officer’s report noted the number of homes proposed exceeded the number allocated to the site in the emerging draft local plan. Also the Council’s latest figures showed that it had achieved an adequate five year housing supply. However the report noted the Council could not give full weight to the housing figures in the emerging plan until a planning inspector had considered it. It also noted representations from the local town council and residents. These included objections to the application because the number of proposed homes exceeded the number allocated to the site in the draft local plan.
10. The report went on to state the illustrative plans showed the site can accommodate up to thirty six homes, a play area and wildlife mitigations measures without a detrimental impact. It also says:

“the level of development proposed is acceptable on site and makes the most efficient and effective use of the site.”

And notes the density of the proposed development equates to 22.8 homes per hectare which is less than the existing nearby estate.
11. The Council considered the material planning considerations such as the density of the proposed development and the wildlife mitigation measures were acceptable, even in light of the emerging local plan. It recommended approval of the application subject to completion of a legal agreement.
12. The Council adopted the local plan in January 2016. After the completion of the legal agreement it issued the decision notice for up to 36 homes in February 2016, in accordance with the recommendation in 2015. Some months later the Council approved an application for four homes on the other site. This brings the number of homes granted permission to up to forty across both sites.
13. In February 2017 the Council considered the reserved matters application for thirty six homes. Again the case officer report notes the representations made by the local town Council and residents. Including the objection because the number of homes across the two sites is ten more than the number allocated for the site in the adopted local plan.

Assessment

14. Under the:

- The National Planning Policy Framework
- Planning and compulsory Purchase Act 2004 s38(6)
- Town and Country Planning Act 1990 s70(2)

the Council can depart from the local plan where material planning considerations show it is acceptable to do so. In this case the planning officer reports show the Council considered the emerging local plan and the objections. However, it decided the site could accommodate the higher number of homes proposed without a harmful impact on the locality.

15. I can see no fault with the way the Council came to its decision. The matters Mr X is concerned about were raised and discussed. I appreciate Mr X disagrees with the decision to grant permission for a higher number of homes, but without fault we cannot criticise the Council for making this decision.

16. Also, Mr X says the extra ten homes which have been granted planning permission will cause extra traffic and a higher density of development on what were previously greenbelt sites. However, I do not consider that ten extra homes across two sites which he accepts have been allocated for development, causes sufficient injustice to warrant an investigation by the Ombudsman.

Final decision

17. I will not investigate Mr X's complaint. We are unlikely to find fault in the way the Council decided to grant planning permission for up to forty homes on two sites near to where he and his neighbours live. Also the injustice he says they will suffer as a result of ten additional homes built across the two agreed development sites is not sufficient to warrant an investigation.

Investigator's decision on behalf of the Ombudsman