

Complaint reference:
17 001 077

Complaint against:
East Devon District Council

The Ombudsman's final decision

Summary: There was no fault in the way the Council considered and determined a planning application next to the complainant's home.

The complaint

1. Mr and Mrs X complained about the actions of the Council in approving a planning application for a development close to their property.
2. Specifically they complained the Council was inconsistent in its decision-making by allowing first floor windows in the development that overlook their home and rear garden and ground floor windows overlooking their patio area. This happened after the Council advised the developer that similar windows would cause unacceptable overlooking to another property, causing the developer to change the plans leading to what Mr and Mrs X say is overlooking to their property.
3. Mr and Mrs X say the resultant development has severely impacted on their privacy and enjoyment of their garden.

The Ombudsman's role and powers

4. 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*)
5. 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

6. I have spoken with Mrs X and considered information from her, including photographs of her property and the outlook from it.
7. I have considered comments and information from the Council.
8. I have considered the relevant planning application and associated documents available from the Council's planning website.
9. I have considered the Council's Local Plan Design Policy
10. I have written to Mr and Mrs X and the Council with my draft decision and given them an opportunity to comment.

What I found

Summary of events

11. The Council received a planning application for significant alterations to a bungalow next to Mr and Mrs X's home, also a bungalow.
12. The applicant withdrew this application because the Council had concerns about the visual impact of the development on the area and the likelihood of significant overlooking of a property on lower ground to the front of the development site.
13. The applicant altered the development significantly, transferring first floor windows so that they faced Mr and Mrs X's property, but at an acute angle to it, rather than another neighbour on a lower plot. He put in a new application in October 2016.
14. Mr and Mrs X objected to the application. They felt the Council was not being consistent in suggesting it might be acceptable for windows to allow some overlooking of their property but not accept some overlooking to another neighbour.
15. The Council decided the application through its delegated decision-making as there were no requests for the application to go before the Planning Committee.
16. Mr and Mrs X complained about the way the Council had handled the application and decision-making process.
17. The Council explained its position, that on balance it felt any overlooking from the development would be limited due to the relationship between the new windows and Mr and Mrs X's property. It did not consider this was significant enough to justify refusing the application.
18. Mr and Mrs X remained dissatisfied and brought their complaint to the Ombudsman.

The Council's design policy

19. The Council has a Local Plan which sets out its planning policies.
20. Within this there is a design policy. This sets out the Council's requirements for development and includes that the scale, massing, height and fenestration of buildings should relate well to their context. In addition the design of a development should not adversely affect the amenity of occupiers of adjoining residential properties, amongst other things.

The Council's scheme of delegation for decision-making

21. The Council's Constitution explains how decisions may be delegated to officers in certain circumstances. Within planning, householder extensions or developments within the curtilage of a dwelling are defined as 'other' developments.
22. The Constitution says if the Ward Member expresses a contrary view from the officer recommendation and such a view is on the basis of material planning considerations (expressed within the initial 21day consultation), then the application will be considered at Chariman's delegations where the Chairman of the Development Management Committee will decide if the application should be referred to the Committee or whether it shall be determined at the Chairman's delegation meeting.
23. If the Ward Member does not express a contrary view to the officer's recommendation, even if there are contrary views expressed by the Parish

Council or other consultees, the application is determined under delegated powers by the Service Lead (Planning Strategy and Development Management).

The Council's actions

24. The Council received an application for the development of a property which it felt would be unacceptably physically and visually dominant on the site and have a significant impact on the amenity of one of the neighbouring dwellings. The site topography slopes away from the front of the development house. The original plans provided first floor dormer windows that would have directly overlooked the lower dwelling's garden from a height.
25. The Council indicated to the developer it would be unlikely to approve the application and the developer withdrew it.
26. The Council received a further application which had reconfigured the first floor so that the windows now faced in the opposite direction. This meant they faced towards the rear of Mr and Mrs X's garden allowing some overlooking of their home but at an acute angle.
27. The Council received a number of objections, including from Mr and Mrs X. The Parish Council visited the site and objected on the grounds of loss of privacy, increased ridge height, which had been refused on similar properties nearby and overbearing design of the dormer windows. There were no Ward Member comments.
28. The Planning Officer for the application visited the site and spoke to Mrs X at length about her concerns. The officer report for the application included photographs taken from many angles, including from Mr and Mrs X's property.
29. The Council considered the revised scheme would be less visually obtrusive in the area because the proposed gable additions and dormer windows would be placed at the rear of the property rather than the front, as previously. The site is within an Area of Outstanding Natural Beauty (AONB) and so the Council had to give weight to the visual impact of the development.
30. The Council accepted that the resulting building would have a greater impact on Mr and Mrs X's amenity. It considered this impact fully; the greater visual impact of a larger dwelling from Mr and Mrs X's outside seating areas and some overlooking of part of their rear garden at an acute angle from the new first floor windows.
31. However, the Council's professional view was that this impact was not so significant that it would justify refusing the application before it. The Council felt that the increase in height and bulk of the development would not be harmful to the character or appearance of the area. It reached the view that, although roof height restrictions had been placed on other properties in the vicinity before, this did not preclude any or all proposals which had height increases if they were acceptable on their particular merits in other ways.
32. The Council used its delegated powers to determine the application through its Senior Planning Officer.

Analysis

33. Planning officers are trained to use professional judgement to assess planning applications and make recommendations about them. They must take account of the Local Plan policies and the National Planning Policy Framework 2012. This says that there is a presumption in favour of sustainable development providing it meets local development plan requirements.

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34. In this case the Council advised the applicant that the original proposal would not be acceptable. Its view was it would be visually obtrusive in the landscape in an AONB as the dormer windows would be visible and dominant at the front of the house, to an open aspect. Also these windows would overlook a lower, neighbouring property without any possibility of screening.
 35. It is usual that a Council will advise applicants an application is very unlikely to succeed at an early stage. Councils are expected to work with developers to ensure good development and avoid unnecessary cost and delay in the process.
 36. When the applicant provided a new scheme the Council had to consider that on its own merits.
 37. It visited the site, viewed the proposal from a number of positions including from Mr and Mrs X's property, both front and back.
 38. The Council assessed the impact of the rear facing first floor windows on their amenity. It accepted there would be an impact and some overlooking, but its professional judgement was that this was not significant enough to refuse the application on those grounds alone. Other aspects of the application met the design requirements of the Local Plan.
 39. The Council accepted there would be some overlooking possible from the new first floor windows but, as these were positioned at an acute angle to Mr and Mrs X's rear windows, kitchen door and garden area, the overlooking would be restricted and so limited.
 40. These views were all ones the Council was entitled to reach having properly considered all the evidence before it in the application. The Council visited the site and I understand listened at length to Mrs X's concerns. It had therefore seen the relationship between the proposed development and their home and made its decision with that knowledge.
 41. Planning decisions are inevitably subjective but use the officer's expertise and training to reach a decision in line with the Local Plan requirements. It is often the case that there will be some impact on neighbouring amenity where properties are close together, as in this case. However, the specific topography of this site and the need to give weight to the visual impact of the AONB meant that the original application would cause unacceptable harm in planning terms whereas any harm from the later, approved application was reduced and so the application was deemed acceptable. That is not inconsistent decision-making as Mr and Mrs X suggest.
 42. I therefore do not find fault in the Council's actions in this respect.
 43. The Council has a scheme for taking delegated decisions. In this case there were no objections from the Ward Member. The Member did contact the Planning Officer but only to clarify certain points of the development. The Member met with Mr and Mrs X but I have seen no evidence the Member requested the application should go before the Committee to be determined or expressed any views contrary to the Planning Officer's recommendation.
 44. I am therefore satisfied the Council determined this application in line with its Constitution.
 45. I do not find fault with the Council's actions in this respect.

Final decision

46. The Council properly considered a planning application for development next to Mr and Mrs X's property.
47. It determined the application through the appropriate delegated decision-making process set out within its Constitution.
48. As there were no further comments by Mr and Mrs X and the Council, I do not uphold the complaint and have completed my investigation.

Investigator's decision on behalf of the Ombudsman