

19 March 2018

Complaint reference:
17 017 920

Complaint against:
East Devon District Council

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr X's complaints about the Council's processing of a planning application and decision not to take enforcement action at his neighbour's property. It is unlikely we will find fault in the Council's actions.

The complaint

1. Mr X complains the Council failed to take enforcement action against his neighbour for a breach of planning control. He also complains about the way the Council decided to grant planning permission for the same neighbour to build two houses on land close to Mr X's property.

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

How I considered this complaint

4. I considered the information provided by Mr X and discussed his concerns with him. He had the opportunity to comment on the draft version of this decision.

What I found

Planning enforcement

5. Mr X's neighbour had planning permission to extend his garage and convert it to annexe accommodation. A condition of the permission is the building must not be used as separate accommodation.
6. Mr X reported to the Council that his neighbour had let the annexe to tenants.

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7. The Council investigated the report and confirmed the neighbour was in breach of planning permission. The neighbour told the Council he would apply for planning permission to allow use of the annexe separately from the main house. However, he changed his mind and told the Council he had served notice on the tenants who would leave in six months.
 8. The Council told Mr X there was a breach of planning control. However, as the tenants would be leaving the property, it will not take any further action. Once the tenants had left there would be no remaining breach.
 9. Local planning authorities have a duty to investigate if they are informed there has been a breach of planning control. In this case, once the Council was told of the breach it considered what, if anything, it should do.
 10. It is clear the neighbour was breaching planning control as the annexe had been let. The Council's statutory duty was to consider the situation. It had powers to take action but it had no duty to do so. Its duty was to consider whether further action would be appropriate.
 11. The statutory test it must apply is set out in The Town and Country Planning Act 1990, section 172. This says the local planning authority may issue an enforcement notice where it appears to it there has been a breach of planning control. And *"it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations."*
 12. The National Planning Policy Framework offers further guidance. It says: *"Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control."*
 13. The Council spoke to the neighbour who advised he had given the tenants notice to leave. The Council considered that this secured the aim of the condition – that the annexe was used as separate accommodation.
 14. Because the object of the condition will be met the Council decided that it should not take further action. I understand that Mr X may disagree with the Council's decision but, without fault, the Ombudsman has no powers to criticise it.
 15. Mr X says his neighbour may let the property again. If this happens then the condition will have been breached again. It would be for the Council, at that stage, to consider if further action is warranted.

Planning application

16. Mr X's neighbour applied for planning permission to build two homes on land close to Mr X's property.
17. Councils are required to give publicity to planning applications. The publicity required depends on the nature of the development although applications must be published on the council's website. The Council's policy for publicising planning applications says that for minor applications it will either write to properties adjoining the site, erect a site notice, or place a notice in the local paper. In this case the Council says it wrote to Mr X's address. Mr X says the Council did not tell him about the application. However, he says he found out from a neighbour and wrote to the Council objecting to it.

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18. All decisions on planning applications must be made according to the development plan, unless material considerations show otherwise. Material considerations relate to the use and development of land in the public interest, and not to private considerations such as the applicant's personal conduct, covenants or reduction in the value of a property.
 19. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded on valid material planning reasons.
 20. The Council says Mr X's objection contained personal information about himself and the neighbour related to the separate enforcement matter. Because of this it did not publish the letter on the planning pages of its website. And as the comments did not include any material planning considerations about the planning application it did not consider his letter when deciding to grant planning permission.
 21. Mr X says the Council held a secret meeting and approved the planning application without giving anyone the chance to voice their objections. This is not the case. The application was approved under delegated authority.
 22. The Council's Constitution sets out where decision making has been delegated to specific officials. It provides that planning applications for 1 to 9 dwellings can be determined solely by officers under delegated powers. Or by officers under delegated powers in consultation with the Chairman (or Vice Chairman without the Chairman) of the Development Management Committee ("Chairman's Delegations") or by the Development Management Committee. In this case the application was decided under 'Chairman's Delegations'.
 23. The case officer report recommended the application for approval because the proposal:
 - complies with the Council's adopted local plan
 - does not affect the amenity of neighbouring properties; and
 - does not harm the visual amenity of the site and surrounding areaThe Chairman accepted the recommendation and approved the application.
 24. It is the role of local planning authorities to balance the right of a landowner to do what he wishes with his property, against the interests of those who own and enjoy land the development may affect.
 25. The case officer report shows the Council considered the objections it received before granting planning consent. The Officer was mindful of the Council's policies when making his recommendation and explained why his recommendation was for approval.
 26. It is not for the Ombudsman to criticise what weight to give to arguments put for or against a proposal. Or where a council has found a balance between the opposing views, provided there is no administrative fault in how it considered the matter.
 27. I have seen no evidence of fault in the way the Council considered this application. Without fault, the Ombudsman has no powers to criticise the Council's decision.

Final decision

28. I will not investigate this complaint. This is because I have not seen any evidence of fault in the Council actions.

Investigator's draft decision on behalf of the Ombudsman