

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

Summary: The Council is not at fault in how it reached its decision to grant planning permission for a neighbour's development.

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### **The complaint**

1. Mr X complains about the Council's decision to grant planning permission for a neighbour's planning application. In particular he complains the Council:
  - a) Prevented him from making representations on amended plans as it did not display the plans on its website until the day before it determined the application and did not notify him about the amended plans;
  - b) Wrongly granted planning permission when the applicant had not demonstrated need;
  - c) Failed to properly take into account Mr X's objections and representations by the parish council;
  - d) Failed to give proper consideration to the impact on his amenity from the height of the building and windows facing towards his property.
  - e) Failed to investigate the viability of the application by requesting a structural engineer's report on the state of the building as required by the Council's validation checklist.
  - f) Wrongly granted planning permission which cannot be implemented.

### **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'. 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, or
  - the fault has not caused injustice to the person who complained, or
  - the injustice is not significant enough to justify our involvement. 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*)

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## **How I considered this complaint**

3. I have:
  - Considered the complaint and the information provided by Mr X;
  - Discussed the issues with Mr X;
  - Made enquiries of the Council and considered the information provided;
  - Invited Mr X and the Council to comment on the draft decision.

## **What I found**

4. When considering complaints about how a council has considered a planning application we look for evidence that a proper process was followed before a decision was made. We expect to see evidence that the Council has identified the material planning considerations, such as the site's planning history and impact on privacy raised by the application and that they have been properly considered. The weight an officer gives to them is a matter for their judgement. We will not come to our own view on the merits of the planning application and we cannot criticise an officer's professional judgement or assessment of the application if there is no evidence of fault in how they reached that judgement.

## **What happened**

5. Mr X's neighbour, Mr Y submitted a planning application to replace the upper part of a storage building, increase the height and include first floor windows. The Council previously granted planning permission for a similar development some years earlier which had expired.
6. Mr X's property is approximately 43 metres from the storage building. He objected to the application on a number of grounds including the proposed increase in height was excessive, would impact on his privacy and Mr Y did not have need for the development. Officer A, case officer visited the site to assess the application
7. The applicant submitted amended plans to reduce the roof height. The Council's website shows the amended plans with a document date of 13 August 2018. The Council has said the document date is automatically generated when a document is uploaded onto its website so this demonstrates the plans were uploaded 15 days before it decided the application. Mr X has said the Council only placed the plans on the website just before the Council issued its decision which prevented him from commenting.
8. Officer A set out a summary of the objections received, including Mr X's and the comments of the parish council, and his assessment of the application in a report. In the report he said that there were two planning policies which supported the development. Planning policy D8 – reuse of rural buildings outside of settlements supported the reuse of rural redundant buildings. Planning policy E5 which allowed the conversion of buildings in rural areas where this relates to the expansion of an existing building.
9. Officer A considered the application was in accordance with the planning policies as it related to the continued operation of an existing business. There was no proposed change of use for the building and the refurbishment was supported by policy E5. There was also no requirement for the business to be of a rural nature.
10. In the report, officer A also set out his assessment of the visual impact and the impact of the development on Mr X's property. Officer A said the proposal as amended was similar in size to that granted under the expired planning

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permission. He said the first floor windows would only view Mr X's property at an angle and across a road. He noted the distance between the boundary of Mr X's property was 15 m and the distance to his dwelling was 43m and he considered the views from the building would not overlook a significant area of Mr X's amenity space. Officer A therefore considered that no new harmful overlooking would arise. Officer A recommend the application be approved.

11. The Council granted planning permission for the application by delegated decision.
12. Mr X made a complaint to the Council about its decision to grant planning permission. Mr X raised a number of issues in his complaint including that the Council should have required a structural survey when validating the planning application. The Council did not uphold Mr X's complaint.
13. I asked the Council why it had not asked the applicant to submit a structural survey as it appeared this was required by its validation checklist and policy D8. The Council said a structural survey was not required as the application was for the extension of an existing business and for its current use, not a reuse or conversion. So policy D8 was not directly relevant to the proposal but officer A made a passing reference to it in his report as the policy supported the reuse of rural buildings. The Council therefore considered it would not be reasonable to require the applicant to submit a structural survey.
14. I also asked the Council to explain how it satisfied itself the business was operating from the application site. The Council has said the applicant had made a number of previous applications. Officers carried out site visits for those applications and did not have cause to question the use of the building. One application was subject to a planning appeal and the inspector noted the use of the building in her decision.

### **My assessment**

#### **Amended plans**

15. The Council and Mr X disagree about when the Council placed the amended plans on its website. The Council's website shows the document date of the plans to be 13 August 2018. So, on balance, I consider the evidence shows the Council published the amended plans 15 days before it decided the application.

#### **Applicant not demonstrating need**

16. The Council's planning policies do not require an applicant to demonstrate need for the expansion of an existing business. So the Council is not at fault for not requiring the applicant to demonstrate need.

#### **Consideration of Mr X's objections and consideration of the impact on Mr X's amenity**

17. Development will always have some impact on an area and neighbouring properties. The Council has to assess and make a judgement on whether that impact is so harmful as to warrant refusal. I am satisfied there is no evidence of fault in how the Council carried out that assessment.
18. Mr X considers officer A could not assess the sight lines between the development site and his property without visiting his property. Officer A carried out a site visit when assessing the application and he had access to the plans. So, on balance, I consider officer A was in a good position to understand the relationship between Mr X's property and the development site and could assess the impact.

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19. Officer A's report shows he considered the issues raised by Mr X's and the parish council's objections, including the size of the building. So I am satisfied the Council considered Mr X's and the parish council's objections and considered the impact on Mr X's amenity. I therefore do not have grounds to question the Council's judgement that the impact was acceptable.

### **Structural survey**

20. The Council is not at fault for not requiring a structural survey. The validation checklist and policy D8 require a structural survey for the reuse or conversion of a building. The application was for an extension of the existing business so a structural survey was not required.
21. Mr X considers the Council should have sought objective evidence that the applicant was using the premises for his business as site visits by officers would not show if the application was operating his business from there. It is for the Council to decide what evidence it requires to satisfy itself the application was for an existing business and there is no requirement for it to seek objective evidence. The Council has explained why it is satisfied the application was for an existing business and I note it considered evidence from the planning inspectorate appeal. On balance, I am satisfied there is no fault in how the considered the matter so I do not have grounds to question its decision.

### **Whether the planning permission could be implemented**

22. The Council is not required to check whether planning permission can be implemented when determining a planning application. It is for the planning applicant to satisfy themselves that they can implement the application. I note Mr X strongly considers the Council should have checked the viability of the application. I note the applicant now considers he cannot implement the planning permission. But the Council is not at fault as it is not required to check if planning permission can be implemented.

### **Final decision**

23. The Council is not at fault in how it reached its decision to grant planning permission for a neighbour's development. I have therefore completed my investigation.

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