

The Ombudsman's final decision

Summary: Mr B complains that there was fault in the way the Council decided to grant planning permission to extend the house to the rear of his own. The Ombudsman has found no fault in the way the Council considered the application, so we cannot question the merits of its decision to grant planning permission.

The complaint

1. Mr B has complained about the Council's decision to grant planning permission to extend the house to the rear of his own.
2. He considers that:
 - the building will result in a loss of privacy;
 - the building will be out of character with other properties;
 - the Council wrongly overruled its conservation officer's objections; and
 - the architect made statements that were incorrect.

The Ombudsman's role and powers

3. 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*)
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 have considered Mr B's written complaint and supporting papers and spoken with him. I have considered the planning papers and complaint correspondence and had regard to the Council's planning policies. I have also sent Mr B and the Council a draft decision and considered their comments.

What I found

The planning system

6. The purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development is that which meets the needs of the present without compromising the ability of future generations to meet their own needs.
7. Planning permission is required for the development of land (including its material change of use). Planning permission may be granted subject to conditions relating to the development and use of land.
8. All decisions on planning applications must be made in accordance with the development plan, unless material considerations indicate otherwise.
9. 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. Material considerations include issues such as overlooking, traffic generation and noise. Government statements of planning policy are material considerations.
10. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless is it founded upon valid material planning reasons.
11. General planning policies may pull in different directions (e.g. in promoting residential development and protecting residential amenities). It is for the decision maker to decide the weight to be given to any material consideration in determining a planning application.

What happened

12. Mr B lives in a detached house in a village. His back garden backs onto the back garden of one of a pair of bungalows. The bungalow is also situated to the side of two Grade II listed dwellings.
13. In 2018, the Council received a planning application to extend the bungalow at the side (facing the listed buildings) and rear, and to increase its ridge height to allow a loft conversion with dormer windows. Officers undertook site visits to consider the impact of the proposals.
14. The Council consulted neighbours and statutory consultees on the application and received objections from many of the neighbouring householders.
15. The parish council objected on grounds of the size of the building and neighbours' concerns. The conservation officer also recommended refusal of the application because of the increase in size, the ridge height and because the new direction relative to the listed buildings would have an unacceptable impact.
16. Following discussions with the applicant, a revised application was submitted with a small reduction in the size of the side extension and with it set back further from the boundary with the listed buildings. The parish council maintained its objections in terms of the size and the number of rooflights. The conservation officer said that their initial concerns remained about the increase in size of the building and the number of rooflights.
17. In response to these concerns, the applicant made further revision to the application. This involved a change to the internal layout and reduction in the width of the building so that the side extension could be set further back from the listed buildings.

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18. The parish council supported the amended application, but the conservation officer maintained their objections. The conservation officer continued to recommend refusal due to the increase volume of the building, the ridge height and the number of rooflights.
 19. The case officer prepared a delegated report. This described the proposals and set out relevant policies. It summarised neighbours' objections and set out the responses of the parish council and the conservation officer to the initial and revised plans.
 20. The report went on to consider the planning merits of the application. It explained with reference to neighbouring buildings to the south, east and west why it was considered that the building was not felt to be overbearing. It also set out why it was not felt that the buildings would cause unacceptable overlooking or loss of light to neighbouring properties.
 21. It considered the impact on the character of the area to be acceptable given the mixture of single- and two-storey dwellings in the area, and the relatively modern construction of many of the buildings in this area of the village.
 22. The report also considered the impact on the two listed buildings which share a boundary with the property. It noted that the conservation officer's concerns remained. However, as the ridgeline was only 1.1 metre higher than before and the distance to the boundary with the listed buildings would be the same as before, it was not felt that there would be any significant impact on the setting of the adjacent listed buildings.
 23. The case officer discussed the proposals with her line manager, including the conservation officer's objections. On balance, it was felt that, as a result of the revised proposals, there were no longer sufficient grounds to refuse the application. The Council then granted planning permission.
 24. Mr B complained to the Council about the way it had considered the application, but it did not uphold his complaint.

My assessment

Overlooking / loss of privacy

25. Mr B considers that the Council was wrong to grant planning permission because his home will be overlooked.
26. This issue was considered in the case officer's report and the separation distance of 25 metres was felt to be acceptable. The Council's policies do not specify a minimum separation distance, so it is for the decision-maker to decide what is an acceptable distance having regard to the individual circumstances of each case. However, as a "*rule of thumb*" a distance of 22 metres between directly facing windows is commonly considered acceptable.
27. In this case, the Council considered the impact on Mr B's amenity and judged the separation distance of 25 metres to be sufficient. There was no fault in the way the Council considered this matter.

Overruled conservation officer

28. Mr B has expressed concern that the Council granted planning permission despite the conservation officer continuing to object to the proposals.
29. As set out above, the plans were twice amended in response to the concerns of the conservation officer and the parish council. While the conservation officer

continued to object to the amended proposals, the case officer's report set out why it was felt that those objections had been overcome.

30. The conservation officer's comments as a consultee were taken into consideration, but the decision-maker considered that the changes made to the proposals were sufficient to overcome any grounds for refusal.
31. I see no fault in the way that judgment was reached and this was a judgment that the decision-maker was entitled to make.

Out of character

32. Mr B considers that the building will be out of character with other buildings in the area.
33. As set out above, the officer's report explained, with reference to the other buildings in the area, why this was not considered to be the case. There was no fault in this regard.

Architect's comments

34. Mr B considers that the architect made incorrect statements. He says the architect also submitted a photograph showing the listed property partly screened by trees when that is no longer the case. He has also expressed concerns about the architect asking the case officer to *"fight for us... in demonstrating our significant compromises to the development manager..."*.
35. The Council has explained that comments made by the applicant's agent will be somewhat subjective and will invariably be in favour of the proposal. However, it is the role of planning officers to make their own assessment and officers are used to reading applicants' submissions, distinguishing factual statements from opinion and reaching their own views.
36. In this case, officers were able to make their own judgement based on the plans, officer visits to the application site and neighbouring gardens and other submissions from the applicant, neighbours and other consultees. I see no fault here.
37. As to the photograph, this was the most recent photograph available on a search engine showing views from the street. Officers had in any event visited to make their own assessment.
38. Lastly, I note the architect's comments to the case officer. Clearly, the Council is not responsible for comments made by third parties. It appears however that these comments were made in the context of the applicant twice having revised the proposals in response to officers' advice on how to overcome the grounds for refusal of the application. It is part of a planning officer's role to advise and provide guidance to applicants. I see nothing here to suggest that officers have acted inappropriately.

Final decision

39. I have closed my investigation into Mr B's complaint because I have found no fault in the Council's actions.

Investigator's decision on behalf of the Ombudsman