

The Ombudsman's final decision

Summary: Mr X complained the Council failed to properly consider the effects on his solar panels when approving planning permission. There was no fault in how the Council considered the effect on Mr X's solar panels. There was fault in how the Council explained its ability to control the development, but this did not cause an injustice to Mr X.

The complaint

1. Mr X complained about the Council's approval of planning permission for development to a neighbouring property. He says the Council failed to properly consider the effects the changes would have on his solar panels. He says his energy generation would be reduced by up to 40 percent and the Council should pay to move his solar panels.

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. 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

4. I considered:
 - the information provided by Mr X and discussed the complaint with him;
 - the Council's comments on the complaint;
 - the planning documents including the case officer's report; and
 - the relevant law and planning policy.
5. Mr X and the Council had an opportunity to comment on my draft decision. I considered all comments I received before making a final decision.

What I found

Planning law and guidance

6. Councils should decide planning applications in accordance with the development plan, unless material considerations suggest otherwise.
7. The National Planning Policy Framework (NPPF) is guidance for drawing up development plans. It is a material consideration when deciding applications but it does not change the statutory status of the development plan as the starting point for decision making.
8. Material considerations involve the use and development of land in the public interest, and not to private considerations such as the applicant's personal conduct, covenants or decrease in the value of a property. Material considerations include issues such as overlooking, traffic generation and noise. Government statements of planning policy are also material considerations.
9. General planning policies may pull in different directions (e.g. in promoting residential development and protecting residential amenities).
10. It is for the Council to decide how much weight to give to any material consideration in deciding a planning application.

Climate change and planning

11. Government guidance in the NPPF puts climate change, renewable energy and reducing carbon at the centre of planning policy and decision-making. It encourages councils to protect even small-scale projects, as these can provide a valuable contribution in reducing carbon.
12. The Courts made it clear the effect new development would have on existing solar panels is a material planning consideration. However, it is up to the planning authority to decide what weight to give any particular consideration in the decision-making balance.

Permitted development

13. Parliament has given a blanket planning permission ('permitted development') for many minor works. Subject to the specific nature of the works, councils have no control over these matters.

What happened

14. Mr X has solar panels on his roof.
15. Mr X's neighbour applied to the Council for planning permission. The application included a dormer window.
16. Mr X, and others, objected to the planning application saying the changes to the property's roof would block some of the light to the solar panels and reduce the energy they produce.
17. The Council decided to grant the planning permission. In the case officer's report about the application, the officer identified the effect on Mr X's solar panels as a material planning consideration.
18. In the report, the officer referred to:
 - the objections received;
 - Mr X's solar panels being south facing and the proposed extension being to the east of the panels;

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- solar panels produce most of their energy during the middle part of the day; and
 - the sun would clear the dormer window before the peak generation hours.
19. The officer decided the effect on the generation would be '*minimal*' and should not, therefore, prevent approval of the application. The officer also identified the dormer could also have been built under permitted development rules, without an application for planning permission. As a result, the officer said the Council could not refuse the permission due to any effects of the dormer.
20. Mr X complained to the Council that:
- it had not properly considered his objections;
 - it should not have approved the planning permission; and
 - shortly after the Council granted permission it sent him a letter about the Council's support for residents installing solar panels.
21. The Council responded to Mr X's complaint and explained, in more detail, the reasons it had given in the planning report. It apologised for the timing of the letter about investing in solar panels.
22. In its response to my enquiries, the Council explained it conducted a visual inspection of the position of the solar panels and considered the likely impact of shadowing. The officer considered that, while there would be some shadowing of the panels, this would be unlikely to affect the peak generation hours and so would not have enough of an effect to justify refusing planning permission.

My findings

23. The Ombudsman is not a planning appeal body. It is not our role to decide whether planning permission should be granted or the weight that should be given to material planning considerations; that is the Council's responsibility. Our role is to review the process by which planning decisions are made. We cannot question a decision the Council has made if it followed the right steps and considered relevant evidence.
24. The Council correctly identified the effects on Mr X's solar panels as a material planning consideration. The report shows it considered Mr X's objection and the likely effects of the dormer on his solar panels. The Council says it conducted a visual inspection. The evidence shows it considered the position of the panels and, based on this, the likely effects on the energy generation. However, the planning officer decided the effect was not significant enough to justify refusing planning permission.
25. Based on the evidence, I am satisfied the Council properly considered the effect on Mr X's solar panels. We cannot question the professional judgement of the planning officer.
26. However, in the case officer's report, its letters to Mr X and its response to my enquires, the Council said it could not have refused or controlled planning permission for the dormer because it could be built under permitted development rules. This is not correct and this was fault.
27. If the dormer had been built under permitted development rules, it is true the Council could not have intervened. However, because it was included in the application for planning permission the Council could have refused the application or applied conditions, had it decided this was necessary. However, since the

Council decided the effect on Mr X's solar panels was not significant enough to affect the application, this did not cause an injustice to Mr X.

Final decision

28. I have completed my investigation and I do not uphold Mr X's complaint. There was no fault in how the Council considered the effect on Mr X's solar panels and we cannot question the professional judgment of the planning officer. There was fault in the Council's explanation of what it could do to control works that would be permitted development if not included in a planning application. However, this did not cause an injustice to Mr X.

Investigator's decision on behalf of the Ombudsman