

15 July 2021

Complaint reference:
20 010 254

Complaint against:
East Devon District Council

The Ombudsman's final decision

Summary: Mr and Mrs C complained about the actions of the Council in approving two prior notification applications for development near their listed property. We cannot find fault with the decision-making process.

The complaint

1. Mr and Mrs C complained that East Devon District Council (the Council), in considering two planning applications (by the prior notification process) for development near their listed property, failed to properly consider all the relevant planning considerations. In particular:
 - The Conservation Officer failed to visit their property, mis-named their property, and underestimated the impact the development would have on the listed setting.
 - The Council failed to properly consider the impact of increased traffic on the surrounding narrow lanes and access lane.
 - The buildings are not capable of being converted and will require significant works beyond the remit of the permitted development regulations.
 - The plans for a disposal of waste are unacceptable.
2. This has caused distress and time and trouble to Mr and Mrs C.

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 the complaint and the documents provided by the complainant, made enquiries of the Council and considered the comments and documents the Council provided. Mr and Mrs C and the Council had an opportunity to comment

on my draft decision. I considered any comments received before making a final decision.

What I found

Prior notification process

6. Planning permission is required for the development of land (including its material change of use). Parliament has also 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.
7. Between permitted development and a planning application there is a third process: Prior Notification (also known as Prior Approval). This applies where the development is, in principle, permitted development, but the Local Planning Authority (LPA) has to authorise certain elements of the work.
8. The purpose of the procedure is to 'fast track' acceptable development but give LPAs limited control to regulate more controversial development.
9. Those elements requiring prior approval are set out in full in the Order. The list includes some agricultural buildings, certain demolition, telecommunications installations and some changes of use. The LPA can only consider the elements identified in the Order when making its decision. It has no authority to control anything else. In respect of applications to convert agriculture buildings to dwellings the elements to consider are:
 - transport and highways impacts of the development,
 - noise impacts of the development,
 - contamination risks on the site,
 - flooding risks on the site,
 - whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a residential use, and
 - the design or external appearance of the building.

What happened

10. The Council granted permission via the prior notification process) for development near Mr and Mrs C's listed property. The decisions were made by officers under their delegated authority for two applications

Application Z – conversion to dwellings

11. The officer report for the conversion to dwellings included:
 - photographs from the case officer site visit;
 - a summary of the objections made by Mr and Mrs C (structural capability of the agricultural buildings, unsatisfactory living conditions of the proposed dwellings, highway impacts and heritage impacts).
 - the planning history including previous refusals under the prior notification process.
 - a description of the measures proposed to address the reasons for the earlier refusals.

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- an assessment of the proposals against the requirements of the legislation and guidance.
12. In respect of the highways and transport impacts it noted the concerns raised about the existing access onto the road, but it did not consider that the extra traffic generated by the proposals would give rise to significant safety concerns. It acknowledged that traffic movements to and from the site would increase. But when compared to previous agricultural traffic generation from the previous use, it did not consider the impact would be so harmful or severe to justify refusal of prior approval.
 13. It considered the impact on residential amenity. This was limited to impact on the future occupiers of the dwellings, not Mr and Mrs C. It explained the difference with the previously refused application and why it was now considered acceptable.
 14. It went on to consider the heritage impact: in particular the listed buildings owned by Mr and Mrs C. It considered the appeal decision Mr and Mrs C had submitted where the Inspector found that the conversion of an agricultural building within the setting of a listed building was harmful.
 15. The report included the detailed view of the conservation officer on the proposals. In this section the buildings were correctly named and described in detail. The officer did not consider the agricultural buildings formed part of the curtilage of Mr and Mrs C's property, having been separated many years ago. In terms of the setting the officer considered the proposal had a limited visual impact on the main house given the distance between them. The officer acknowledged that the second part of the property was closer, but they did not consider it affected the overall setting of the listed buildings. They noted that the structure was further away from Mr and Mrs C's property than a different agricultural building which already had planning permission for development. The conservation officer concluded that the proposals would not cause sufficient harm to the setting of the listed buildings to warrant refusal of the application.

Application Y – change of use

16. The second application contained a description of the historic character and architectural merit of Mr and Mrs C's property from the official listing record. The case officer in their description of the history of the site, referred to Mr and Mrs C's property as a farm and a farmhouse, but also used the phrase 'small mansion' from the listing record.
17. The case officer went on to assess the impact of the proposals on the setting of the listed buildings and included the detailed view of the conservation officer described above for Application Z. The report also contained the same view on the highways impact and noted that the County Council had not raised any concerns about highway safety or road capacity issues.
18. The Council approved both applications.

Complaint

19. Mr and Mrs C complained to the Council about both applications. They said the volume of additional traffic generated by the development would be unacceptable and the Conservation Officer had not properly considered the impact on their property. In particular the officer had not visited the site and had mis-described their property, indicating the officer had not properly appreciated the impact of the development.

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20. The Council responded, noting that the National Planning Policy Framework stated that:
- Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*
21. It considered that the lanes leading to the site were typical of the area and the traffic levels anticipated by the development would not lead to unacceptable or severe impacts. The Council noted that the County Council had not raised any objection to the proposals and a refusal on highway grounds would not have been justifiable.
22. The Council considered the conservation officer had a good understanding of the site: the officer had identified the historic assets, their significance, how the site had evolved over time and the relationship between the buildings. The officer then went on to assess the proposals noting that Mr and Mrs C's property had a limited visual relationship with the agricultural buildings, and those buildings contributed little to the setting of the listed building. The Council considered this was key to the officer's conclusions: the agricultural buildings were already there but their impact on the setting of the listed building was limited so the proposed changes would have little impact.
23. The Council accepted that the report could have been a little clearer in expressing the view that in this context even the limited harm identified was acceptable when balanced against the social and economic benefits of the proposals.
24. Mr and Mrs C remained unhappy and escalated their complaint. The Council responded, explaining that the County Council had not raised any objection on highway grounds and the highway impact was covered in detail in the officer reports. It did not uphold the complaint and referred Mr and Mrs C to us.
25. In its response to my enquiries, the Council explained that the prior notification process did not require consideration of the drainage arrangements. But an application for full planning permission had since been received which included consideration of the drainage arrangements. This is still being considered by the Council.

Analysis

26. I understand Mr and Mrs C are unhappy with the approval of these two applications for development near their property. However, I am unable to identify any fault in the decision-making process.
27. The Council visited the site and assessed the relationship between the listed buildings and the existing agricultural buildings. The officer report considered each element required by the legislation including the highways and heritage impacts. It explained why it considered the highways impacts would not be significant enough to warrant refusal and this was supported by the lack of objection from the County Council (the highway authority).
28. It also included the conservation officer's view in both reports to justify its conclusion that the proposals would not significantly affect the setting of the listed building. I do not consider the incorrect reference to the listed building as a farmhouse in one of the reports detracted from the conclusions reached. The report contained a significant level of detail about the history, use and layout of the site, indicating that both the case officer and the conservation officer had a good understanding of the site.

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29. I also consider the first complaint response gave a detailed and thorough response to Mr and Mrs C's concerns.
 30. I acknowledge that Mr and Mrs C strongly disagree with the conclusions reached but I cannot find fault with the way in which they were reached, and I cannot change them.
 31. The issue of the treatment of waste was not relevant to the prior notification process and the structural concern about the buildings is a matter for the building regulation process.

Final decision

32. I have completed my investigation into this complaint as I am unable to find fault causing injustice in the actions of the Council towards Mr and Mrs C.

Investigator's decision on behalf of the Ombudsman