

5 May 2023

Complaint reference:
22 010 942

Complaint against:
Northumberland County Council

The Ombudsman's final decision

Summary: Mr X complained about the Council's decisions relating to development on land near his home. There was a service failure that caused some injustice to Mr X but potentially more to others who live closer to the development. We have made recommendations to remedy the injustice we found.

The complaint

1. Mr X complained about the Council's decision to grant planning permission for development including a dormer extension and balcony that affects his amenity on land near his home.
2. Mr X said the Council failed to:
 - properly consider the impact the development would have on its surroundings and so it approved an application that did not accord with planning policy;
 - notify him about planning applications;
 - upload the planning case officer's report to its website until a year after the decision was made; and
 - take enforcement action against the developer, after he complained that the colours of some building materials did not accord with details on approved plans.
3. Mr X would like the Council to compensate him for the impact the development has had on the value of his home.

The Ombudsman's role and powers

4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. Service failure can happen when an organisation fails to provide a service as it should have done because of circumstances outside its control. We do not need to show any blame, intent, flawed policy or process, or bad faith by an organisation to say service failure has occurred. (*Local Government Act 1974, sections 26(1), as amended*)
5. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)

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6. If we are satisfied with an organisation'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

7. I read the complaint and discussed it with Mr X. I read the Council's response to the complaint and considered supplementary planning guidance, the Council's Statement of Community Involvement, and documents from its planning files, including the plans and case officer reports. I considered photos sent by Mr X. I discussed what had happened with a Council planning manager.
8. I gave Mr X and the Council an opportunity to comment on earlier drafts of this decision. I considered the comments I received before making a final decision.

What I found

Planning law and guidance

9. Councils should approve planning applications that accord with policies in the local development plan, unless other material planning considerations indicate they should not.
10. Planning considerations include things like:
- access to the highway;
 - protection of ecological and heritage assets; and
 - the impact on neighbouring amenity.
11. Planning considerations do not include things like:
- views from a property;
 - the impact of development on property value; and
 - private rights and interests in land.
12. Councils may impose planning conditions to make development acceptable in planning terms. Conditions should be necessary, enforceable and reasonable in all other regards.
13. Regulations set out the minimum requirements for how councils publicise planning applications.
14. For major development applications, councils must publicise the application by:
- a local newspaper advertisement; **and** either
 - a site notice; **or**
 - serving notice on adjoining owners or occupiers.
15. For all other applications, including minor developments, councils must publicise by either:
- a site notice; **or**
 - serving notice on adjoining owners or occupiers.
16. As well as regulatory minimum requirements, councils must also produce a Statement of Community Involvement (SCI). The SCI sets out the Council's policy on how it will communicate with the public when it carries out its functions.

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17. Not all planning decisions are made by council planning committees. Councils may delegate decisions to planning officers to make some decisions, restricted to circumstances set out in delegation schemes. Delegation schemes are found in a council's constitution.
 18. Decisions made by officers using delegated powers are controlled by the Openness of Local Government Bodies Regulations 2014. The 2014 regulations require that certain decisions and their background papers are publicised on council websites, as soon as is practicable after the decision is made. The courts have decided the regulations apply to delegated planning application and planning enforcement decisions.

What happened

19. The Council granted planning permission for development on land near Mr X's home. About a year later, the Council received a revised plan, which added a small addition to the ground floor extension.
20. Mr X said the balcony impacts his privacy and other neighbours who live close to the site. He said the extension is large and overbearing on neighbours and in breach of policy on the local plan. Mr X said the Council had not consulted him about either application or put up a site notice to warn residents that a proposal had been submitted.
21. For each application, a planning case officer considered the application and wrote a report. The reports included:
 - a description of the proposal;
 - a summary of comments from the Council Ecologist;
 - a list of planning policy and guidance considered relevant;
 - some comments about the main planning considerations, including the principle of development, design issues, impact on amenity and ecology; and
 - the officer's recommendation to approve the application, subject to planning conditions.
22. The reports say that four neighbours were consulted by letter, but no comments were received. The Council provided me with details of neighbours consulted from its document management system. They were the properties either side and in front of the development site and do not include Mr X's address.
23. In relation to impact on amenity, both reports include a paragraph that says the development has been assessed against policy and considered acceptable. There is no mention of the balcony and how it might impact on neighbouring properties.
24. Mr X also complained about the Council's failure to investigate his allegations about breaches of planning control. This was because doors, windows, gutters, downpipes and cladding on the extension are black in colour, but on approved plans they are marked as white.
25. Mr X does not represent other individuals. He told me that the neighbour between him and the site has explained they do not want to be involved in the complaint.

The Council's response to my questions

26. After examining the plans and decisions, I wondered why the development had not been controlled by the Council to avoid direct overlooking. I spoke to a planning manager about what had happened.

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27. The planning manager explained the paragraphs in the reports that say the development was acceptable are standard paragraphs. They are used as part of a 'light touch' approach to householder applications to improve work throughput.
 28. The manager accepted that the balcony does directly overlook the properties either side of it. They said that balconies like this should be refused unless any adverse impact on privacy can be adequately resolved. The Council has previously allowed similar balconies by requiring higher balustrades and obscure glazed screens on elevations facing private garden space and habitable rooms. This is what they would have expected to happen here when the first application was considered and approved.
 29. When the second application was received, the manager explained that the principle of development for the balcony was already lawful, so it was only the new element, the increased size of the extension, that could be controlled.
 30. The manager said that while it was no excuse for what had happened, the planning department was and remains under significant pressure. They said that even very experienced and well-respected officers have made errors that they would not have expected in normal circumstances, but this was happening in a workplace where staff were often overwhelmed. The manager said the Council is trying hard to recruit and fill vacancies, but it is difficult to attract and keep the staff needed in the current job market.
 31. In relation to its failure to upload the second planning case officer report, the Council thinks this may be an oversight by an officer. It said, about a year ago, it brought in changes to allow for a second check by its Central Register Team, who now also check whether the upload was successful when completing the planning register of documents. The manager said that so far, the new system was working, and several upload errors had been corrected. The Council is still trying to determine why uploads occasionally fail.
 32. However, the missing case officer report had only been noticed when the Ombudsman had first asked for a copy of it, at which point it was uploaded.
 33. The Council said it did not investigate Mr X's enforcement allegation within its published time targets. Its enforcement officer has recently begun an investigation.

The impact on Mr X and others

34. The approved plans show a low stainless-steel and clear glass balustrade around the edge of the balcony.
35. Mr X does not share a boundary with the development site - there is another property in between. The boundary of Mr X's home is more than 20 metres from the extension and balcony. He sent me photos taken from his rear garden towards the site.
36. Mr X has two private areas which are not affected by overlooking, one behind a single storey outrigger to the main part of his home, and another behind an outbuilding. There is a gap between the outbuilding and his home. Part of the gap is filled by a hedge which is trimmed to about 2 metres in height at the moment. From the photo, it seems likely that a person sitting or standing on the balcony would be able to see over the hedge, through the gap into the central part of Mr X's garden.

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37. One photo Mr X provided shows how the balcony impacts his neighbour – it gives direct views over their entire garden. Residents either side and directly adjacent to the site are likely to be more affected.
38. Mr X said that any apology from the Council would be meaningless as, in his view, it has done everything it could to thwart his own investigation into what had happened.

My findings

39. The case officer reports use standard paragraphs to state the impact on amenities is acceptable, but there is no case specific detail that shows why or how this judgement was made. Without some detail, albeit briefly stated, we cannot know that key planning issues were considered before the decisions were made. This is a result of service failures.
40. But for the service failure in relation to the first approval, I consider it likely that the outcome would have been different. The Council would either have refused this application or required a condition to protect privacy in areas either side of the site.
41. The greatest impact is on the neighbours directly either side of the site, who are closer to the balcony and more exposed to overlooking. The impact on Mr X is much less significant, but there is some injustice caused to him. The development is too far away from Mr X to have an overbearing impact on him. The outrigger and outbuilding afford protection to private spaces in his garden, but there is some loss of privacy through the gap between them. He is also clearly frustrated and disappointed by what has happened. Even though the impact on his privacy is much less than it is on his neighbours, he would be in a better position if the original application had been properly considered.
42. The delay in assessing and deciding Mr X's planning enforcement allegations is fault. However, I am not persuaded that Mr X is caused a significant injustice by any failure there may be in controlling the colour of some of the building materials. Despite this, Mr X has made an allegation that has not yet been determined, and this is likely to cause frustration. The Council should make its decision without further delay and inform Mr X of the outcome.
43. There may be a greater impact on neighbours who live adjacent to the site, and the Council should assess the potential harm of any breach of control before deciding what action, if any, is justified.
44. I find no evidence of service failure in relation to planning application publicity requirements for either application. The Council sent me a screenshot from its document management system showing addresses of neighbours who were sent notification letters. The list does not include Mr X's address. The Council was not required, either by regulation or policy, to put up a site notice or send a notification to Mr X.
45. The Council did not upload the second case officer report soon after the decision was made. This is a service failure. The Council has since made changes to rectify this problem. It has changed its system to build in a failsafe check and I am satisfied it is continuing its efforts to resolve the problem. This is a satisfactory outcome. The second report was uploaded, and there is no outstanding injustice to remedy.

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46. However, I made recommendations to remedy injustice caused by the service failure I have found in relation to lack of evidence of consideration of key planning issues.
 47. I also recommended a payment to Mr X to recognise the injustice caused by the service failures I found. Mr X may, if he chooses, use the payment or part of it towards buying more screening, trellis, or planting to fill the gap between his outbuilding and home.
 48. The Council agreed to carry out my recommendations.

Agreed action

49. To remedy the injustice caused by the service failure I have found, the Council has agreed to the following actions. The Council will:
 - a) pay Mr X £300. This payment is to recognise that there will be some loss of his privacy, his time and trouble in bringing his complaint to our attention, and the disappointment and frustration caused by what has happened. This should happen within one month from the date of our final decision;
 - b) attempt to negotiate with the developer to improve screening on the balcony to reduce direct overlooking towards properties either side of the site. The Council should offer to pay for the cost of improvements to screening and other necessary works. This should happen within three months from the date of our final decision;
 - c) decide what action, if any, is justified in relation to Mr X's planning enforcement allegations and proceed without further delay. The Council should inform Mr X of the outcome of its enforcement decision;
 - d) review the use of standard paragraphs in case officer reports to ensure that site specific details and reasons are included. This should happen within three months from the date of our final decision;
 - e) consider whether it has the staff to deliver an adequate service and that staff have the support necessary to carry out their work. This should happen within three months from the date of our final decision.
50. The Council will report what has happened and the outcome of the agreed remedies to the relevant scrutiny committee, so it can have oversight of any changes that are made. This should happen within one month from the date we inform the Council the remedy is satisfied.
51. The Council will provide us with evidence it has complied with the above actions.

Final decision

52. There was service failure that caused an injustice that should be remedied. I have completed my investigation because the Council accepted my recommendations.

Investigator's decision on behalf of the Ombudsman