

Complaint reference:
16 000 706

Complaint against:
Welwyn Hatfield Borough Council

The Ombudsman's draft decision

Summary: Mr X says the Council is at fault in its handling of a planning application made by his neighbour and his subsequent reports of breaches of planning control. The Ombudsman has found some evidence of fault and she recommends the Council apologise to Mr X and pay him £100 in recognition of the time and trouble caused to him.

The complaint

1. Mr X says the Council is at fault in its handling of a planning application submitted by his neighbour. In particular Mr X says the Council did not consider his objections properly and it failed to include a condition to protect the privacy of his home. He also says the Council has failed to take timely and appropriate enforcement action against breaches of planning control at the site. Mr X says this matter has caused him and his wife distress, anxiety, financial loss and had a detrimental impact on the amenity of his home.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)

How I considered this complaint

4. As part of my investigation I discussed the complaint with Mr X and considered information provided by him. I also made enquiries of the Council and considered its reply and documents it provided.

What I found

Key facts

5. Mr X and his wife own a bungalow which has a garden with a decking area. The Council has granted Mr and Mrs X planning permission for a loft conversion with dormer window but they have not yet implemented this.
6. In October 2015 the Council received a planning application for a property neighbouring Mr X's home. The application sought permission for the erection of a single storey side/rear extension, including extending the roof to form a habitable room.
7. The Council notified Mr and Mrs X about the application. In response they wrote to the Council setting out their objections to the application. These included concerns about the loss of privacy and sunlight to their home and the impact of the proposal on the planning permission granted to them for a loft conversion. The Council did not reply to their letter of objection.
8. The case officer for the application considered the proposal and set out her thoughts in a report. In this, she considered the impact of the proposal on neighbouring properties including Mr and Mrs X's. The report also set out the objections made by Mr and Mrs X although these were wrongly attributed to another address.
9. In December the Council approved planning permission for the application, subject to conditions. The Council did not include a condition requiring the dormer windows to be obscure glazed.
10. Unhappy with the decision Mr X complained to the Council in January 2016. The Council replied the following month but did not uphold his complaint.
11. On 8 February Mr X contacted the Council's Planning Enforcement department about concerns he had regarding works at the neighbouring property including the height of the extension and the dormer windows. The Council sent Mr X an automated acknowledgement.
12. The planning enforcement officer spoke with Mr X on 18 February and advised him that a case had been opened and was being investigated. He apologised for the delay in contacting Mr X.
13. On 23 February the enforcement officer visited the site and concluded there were differences between the approved plans and what was being built on site. The officer contacted the agent for the site and explained his concerns. It was agreed that the agent would submit a 'Section 73' application to regularise these differences. The officer telephoned Mr X and updated him.
14. Mr X contacted the Council a few days later following a conversation with his neighbour's agent during which the agent had refuted that there were any concerns at the site. In response to Mr X's call the Council revisited the site.
15. In early March Mr X contacted the enforcement officer to see if he had visited the site again. It does not appear the Council replied to Mr X's email.

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16. Meanwhile the enforcement officer contacted the agent again regarding the submission of a Section 73 application which he still considered necessary due to breaches of planning permission at the site.
 17. The Council received the Section 73 application that month and notified Mr and Mrs X following its validation.
 18. Mr and Mrs X have submitted objections to the Section 73 application and instructed a solicitor to help them do so.

Analysis

19. Mr X has a number of concerns regarding the Council's handling of the initial application submitted by his neighbour and its handling of his subsequent complaints to the enforcement team. I will now address Mr X's concerns as set out in his letter to the Ombudsman.

Consideration of Mr X's objections to the initial application submitted by his neighbour

20. Mr X sent a letter setting out his objections to the application in November. The Council did not reply to his letter. Mr X says this is fault by the Council. I do not agree. The Council must consider the contents of objection letters it receives but it does not have to respond to each letter individually.
21. The Council only notified Mr X about the application and did not notify other adjoining owner/occupiers. Mr X contends this is also fault by the Council. However, Mr X was notified about the application and was able comment on it and so he has not been disadvantaged by the fault he claims.
22. Mr X says the case officer did not visit the site and so could not have properly understood the impact of the proposal and his objections. I do not agree. The Council says the case officer did visit the site and I have no reason to believe this did not occur. Nevertheless there is no requirement for case officers to visit an application site when determining an application. Case officers may consider the impact of the proposal using the plans, local knowledge and internet tools.
23. In his letter of objection Mr X set out his concern that a proposed Juliet balcony would overlook his garden and deck. For this reason Mr X suggested the balcony should be fitted with a rail guard and inward opening windows. The case officer's report considered the impact of the balcony on the amenity of Mr X's home. The case officer acknowledged it would result in some overlooking of Mr X's garden but concluded this was not significant enough to warrant refusal of the application. Therefore while I appreciate Mr X disagrees with the case officer's view and is disappointed she did not act on his suggestion the report clearly demonstrates that she had regard to his concerns.
24. Mr X's objection letter also explained his concerns that the proposed dormer windows were too big and would appear overbearing. He also said the windows would have a negative impact on the privacy of his home as they would overlook his bedroom, kitchen and deck. He proposed the windows were scaled back and fitted with obscure glazing. Again the case officer's report discussed this matter with the conclusion that the dormers windows would not result in any loss of privacy to Mr X's home. While I recognise Mr X disagrees the report demonstrates that his concerns were considered and therefore I cannot conclude there is evidence of fault in how the Council determined this matter.
25. Lastly Mr X objected to the application on the grounds that he had been granted planning permission for a loft conversion. He contended the proposal would

prevent him or future owners from acting on the planning permission as any loft conversion would be overlooked by the dormer windows proposed in the application. The case officer's report did not discuss this matter. This is fault by the Council As the report should have addressed the substantive objections made against an application.

26. As part of my enquiries I asked the Council to consider the relationship between Mr X's home and his neighbour's in the event that Mr X implements the planning permission granted to him. In its reply the Council explained that two of the three dormer windows to the neighbouring property do not serve habitable rooms and so overlooking would be unlikely. The Council explained the third dormer window would serve a bedroom. However because of its position in relation to the obscure glazed dormer window on the plans approved for Mr X's loft conversion it would be unlikely there would be any direct overlooking between the loft conversions. For this reason the Council does not consider the overlooking would be significant and it would not have warranted it refusing Mr X's neighbour's application.
27. For the reasons set out above I do not consider the Council's failure to include a discussion about the planning permission granted to Mr X in the case officer's report altered the outcome of the application. Therefore I cannot conclude that Mr X has been caused injustice as a result of the fault I found.
28. Lastly Mr X says the Council wrongly attributed his objections to another neighbouring property. I agree. The Council should have taken greater care to ensure its report was accurate. However the case officer's report clearly considered the impact of the proposal on Mr X's home and so I do not see this error affected the consideration of the application.

Failure to include a condition for obscure glazing

29. Mr X says the Council is at fault for failing to include a condition to the planning permission it granted his neighbour requiring the dormer windows to be obscure glazed. I agree. The case officer's report of the application set out that the dormer windows facing another property neighbouring the application site (not Mr X's home) would overlook that property. To mitigate this the case officer said the relevant dormer windows would be obscure glazed. I therefore conclude that a condition requiring this should have been included to the planning permission it granted.
30. However the case officer made no such recommendation regarding the dormer windows facing Mr X's home. Therefore I cannot conclude that Mr X has been caused an injustice as a result of the Council's failure to include this condition.

The Council's handling of Mr X's enforcement reports

31. Mr X says the Council has failed to take timely action in response to his report of breaches of the planning permission granted to his neighbour. I do not agree. The Council's enforcement plan states that it will aim to investigate reports of planning breaches of the type reported by Mr X within 15 working days. Mr X first reported the breaches on 8 February and the Council visited the site on 23 February. This is within the 15 working day target.
32. Following its visit, the Council asked the agent to submit a Section 73 planning application. This is the type of application required when a person carries out works which do not meet the approved plans. It is for the Council to determine what enforcement action, if any, it is expedient to take. The Council having visited the site concluded that the submission of an application to allow the changes was

the best way forward. I do not consider the Council is at fault regarding the action it has decided to take.

33. I do however recognise the Council has not always updated Mr X about the enforcement action it has taken or replied to his emails chasing an update. This is fault by the Council.
34. Lastly I note that Mr X has expressed concerns regarding the Council's consideration of the Section 73 application submitted to the Council. I understand the Council has notified Mr X about the application and he has commented on this. The application has yet to be determined and for this reason it is not appropriate for the Ombudsman to comment further on this matter now.

Recommended action

35. I have identified fault by the Council for inaccuracies in its case officer's report and for failing to include a discussion about Mr X's planning permission for a loft conversion. This has caused Mr X uncertainty and put him to the unnecessary time and trouble of pursuing this matter with the Council and the Ombudsman. Mr X has also been caused additional time and trouble as a result of the Council's failure to reply to his emails regarding enforcement action. I acknowledge the Council has already apologised to Mr X for these failings however I think it would be appropriate for the Council to pay him £100 in recognition of the time and trouble he has been caused.

Draft decision

36. I have found some evidence of fault by the Council and I recommend it takes the action set out about to remedy the injustice caused to Mr X. I have not found any evidence of fault which would have altered the outcome of the application or in the substantive action taken by the Council to address breaches of planning control at Mr X's neighbour's home.

Investigator's draft decision on behalf of the Ombudsman