

Report

on an investigation into
complaint no 11 017 203 against
Selby District Council

9 October 2013

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

This report has been produced following the examination of relevant files and documents and interviews with the complainant and relevant employees of the Council.

The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Key to names used

Mr X & Ms Y - the complainants

Report summary

Failure to address material planning considerations in planning report

Mr X and Ms Y live in a converted barn which sits very close to a cottage. The owner of the cottage applied for planning permission to build an extension. Mr X wrote an objection letter, as he thought the extension would come too close to his kitchen-dining room window, blocking light and affecting his outlook.

The extension, which is less than 3.5 metres from the kitchen-diner window, was approved by Officers using delegated powers.

Mr X complained to the Council about its decision. The Council said that it accepted there was maladministration as the Case Officer's report did not refer to Mr X's objection, but it felt the extension was acceptable.

Mr X and Ms Y were not satisfied with this response, so they complained to the Ombudsman.

At a late stage in my investigation, the Council said the extension could have been built without planning permission and it had been aware of this before it approved the application.

Findings

I found maladministration in the way the Council dealt with the planning application because:

- there is no reference on the planning file to show how the extension would impact on the kitchen-diner. The Case Officer's report should have included Mr X's objection as it was a material planning consideration;
- the Council's view that the extension could have been built without planning permission is also a material planning consideration and should have been included in the Case Officer's report;
- I need to see evidence on the planning file that the Council has taken material planning considerations into account and what it makes of them. This did not happen here.

Recommended remedy

Mr X and Ms Y now have an extension very close to them. It cuts out light from their kitchen-diner and the outlook from the room is now a stone wall. Their neighbours would have been entitled to build this extension, or something similar, without the need of planning approval. This means I cannot say the maladministration by the Council has directly affected Mr X and Ms Y's amenity.

However because of maladministration in the way the planning application was dealt with, Mr X and Ms Y were put to the trouble and expense of making their complaint. This included the cost of employing a planning consultant to advise them on the Council's response to their complaint.

The Council should apologise to Mr X and Ms Y for the failure of its service to properly address material planning considerations relevant to the case. The Council should also pay them:

- £1,896 for the cost of their planning consultant's fees, which they would not have incurred if the Council had considered permitted development rights in the Case Officer's report;
- £250 for their time and trouble in bringing their complaint to the Ombudsman's attention.

Introduction

1. Mr X and Ms Y live in a converted barn. Their neighbour applied for planning permission to add a single storey extension to his cottage. Mr X and Ms Y wrote to the Council objecting to the application. In their objection they specifically referred to the impact the new extension would have on reducing light to their kitchen-dining room.
2. The Planning Case Officer's report made no reference to their objection. The report contains no analysis of how the development will impact on the complainants' kitchen-diner.
3. Officers approved the extension using delegated powers.
4. At a late stage of our investigation the Council said the extension could have been built without planning permission using permitted development rights.
5. The Council said its Case Officer assessed the applicant's permitted development rights during evaluation of the application. There was no mention of this assessment in his report.

The Ombudsman's role and powers

6. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. If there has been maladministration, the Ombudsman considers whether it has caused an injustice and if it has, she may suggest a remedy.¹
7. 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.²

Investigation

8. The Investigator visited the Council and the complainants. He inspected the Council's file and interviewed the Planning Case Officer.

Legal and Administrative Background

9. When a council decides a planning application, section 70 of the Town and Country Planning Act 1990 requires it to:

'...have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.'

10. The Council's Local Plan policy ENV1 is most relevant to the issue of the window to the kitchen-diner and the impact on that room.

¹ Local Government Act 1974, sections 26(1) and 26A(1)

² Local Government Act 1974, section 34(3)

11. ENV1 states that proposals will be allowed, provided they achieve a good quality of development. In particular the Council should take account of:

‘the standard of layout, design and materials in relation to the site and its surroundings...’.

12. Regulations set out the limits of permitted development. This is development for which no planning permission is required.³ Extensions to houses are permitted within certain limits and subject to a number of conditions, only one of which applies to single storey extensions. This is that the materials used should be similar to those in the existing building.
13. A planning application is not an implied request to determine permitted development rights.⁴ Where these rights have been considered and are relevant to a planning application they may become a material planning consideration.
14. Where planning applications are considered, Case Officer reports should both identify and address material planning considerations. This is necessary so any third party, including a review body such as the Ombudsman or the Court, can know whether the Council has followed a proper procedure.

Background

15. Mr X and Ms Y objected to the application by their neighbour as it would be overbearing and cause loss of light to their kitchen-dining room.
16. In his objection letter, Mr X wrote to the Council’s Planning Case Officer, saying the new extension would be very close to his home. He said:

‘[it] would change [the kitchen-diner] from an enjoyable living space to a dark environment...’ and

‘To lose the amenities we enjoy of natural light and sunshine in our homes is unacceptable.’
17. There is no mention of this objection in the Council’s Case Officer’s report. The Case Officer visited the site, but there is no reference to the existence of the window.
18. The application was approved by Officers using delegated powers.
19. After the planning permission was granted, Mr X went to seek advice from his local Councillor. The Councillor, a former member of the planning committee, visited the site and read the Case Officer’s report. The Councillor told Mr X the distance between the kitchen-diner window and new extension was exceptionally close and the analysis in the report was sparse.

³ The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008

⁴ Saxby v Secretary of State for the Environment and Westminster City Council [1998] JPL 1132

20. The Councillor referred Mr X and Ms Y to a planning consultant who had worked as a planning officer for the Council. The planning consultant confirmed the opinion given by the Councillor.
21. Mr X then complained to the Council, who accepted the Case Officer's report should have mentioned Mr X's objection to the application. However, the Council argued that this was 'technical maladministration' that had made no difference to its decision.
22. Mr X and Ms Y then complained to me about what had happened.

Findings

23. The distance between the new extension and the kitchen-diner window is 3.46 metres.
24. The extension is to the south and east of the barn, so light is reduced in the morning. The outlook from the kitchen-diner is dominated by the new extension.
25. In response to my enquiry, the Council said the Case Officer's report shows that it did take the relevant issues into account.
26. It said the Case Officer assessed the impact on the kitchen-diner as part of his site visit. The Council quoted the following extract from the Case Officer's report to demonstrate that this had happened:

"The key issues in this respect are considered to be the potential overlooking, overshadowing and oppression from size scale and massing. Given the host property and adjacent property are barn conversions they are laid out in close proximity with approximately 7m separation. The proposed extension would result in approximately 4m extension to the host property. The proposal does not seek to provide any openings to the northern or western elevations however it is considered prudent in the interests of amenity to remove permitted development rights for any openings into these elevations should consent be granted. Due to the proposals location, size and height the proposal is considered not to have any significant adverse affect of overshadowing, oppression or, subject to removal of permitted development rights, overlooking to the neighbouring properties and therefore accords with criterion 1 of policy ENV1 of the Local Plan."

27. There is no mention of the kitchen-diner window or Mr X's objection letter.
28. The Case Officer accepted that, in terms of windows affected by the new development, the kitchen-diner in the complainants' house was 'a key relationship by virtue of proximity'. He also agreed the relationship between the extension and that window was a material planning consideration.
29. The Case Officer said that he only includes key issues in his report and that it is a balancing act between the length of the report and the time it takes to write them. He says he did cover the key issues of potential overlooking, overshadowing and oppression from scale and massing, but accepts he did not mention the window

to the kitchen-diner or Mr X's objection. The Case Officer says the kitchen-diner window was material, but he did not judge it to be justification for refusal.

30. The Officer took photos of the site, but none show the window. However, the Case Officer says that he did see it.
31. The Case Officer said Mr X's objection letter was not mentioned in his report because of an administrative error on his part.
32. At a late stage of my investigation, the Council told me that it knew from the outset that the extension was permitted development and so could be built without planning permission. It sent details to justify its reasoning, which I accept.
33. The Council says the Planning Case Officer considered the applicant's permitted development rights and was aware the development could be built without planning permission at the time he carried out his site visit.
34. The Planning Case Officer does not mention his assessment of permitted development rights in his report. He does not say that the extension could have been built without planning permission.

Conclusions

35. There was a clear objection from Mr X about the development and its impact on his kitchen-diner window on the planning file. There is no record to show the Council considered this objection or the specific impact on the kitchen-diner window before it decided the application.
36. The Council says its Officer considered the applicant's permitted development rights at the outset and that planning permission was not necessary.
37. The issue of permitted development rights was relevant to the decision that followed, but it was not mentioned in the Case Officer's report.
38. Planning authorities are required by law to take account of all material considerations before making their decisions. When inspecting a planning file I expect to find some evidence to show this has happened. I do not expect a case officer's report to refer to every possible planning consideration, but it should certainly refer to those engaged by the process.
39. There should be some analysis of planning considerations material to the case. I not only need to know the Council has taken material planning considerations into account, but also what it makes of them.
40. In this case a number of material planning considerations were not included in the Case Officer's report. These were Mr X's objection, the impact of the extension on the kitchen-diner window and that the extension, or something similar, was likely to be permitted development. This is maladministration.

41. However, even if the Council had refused the application, the extension or something very similar to it might have been built without needing planning permission. Because of this, I cannot say that maladministration by the Council in the way it considered the planning application has directly affected Mr X and Ms Y's amenity, as it could have been adversely affected anyway.
42. If the permitted development issue had been properly addressed, Mr X would have known much sooner that his objection could make no difference to the outcome. But for this failure, Mr X and Ms Y could have avoided the time, trouble and expense of pursuing their complaint, including the cost of instructing a planning consultant.

Recommendation

43. To resolve this complaint the Council should apologise to Mr X and Ms Y for the failure of its planning service to deal properly with relevant and material planning considerations when considering their neighbour's planning application. It should also pay them:
 - £1,896 for their planning consultant's fees, which they would not have paid if the Council had clearly explained permitted development rights in the Case Officer's report;
 - £250 for their time and trouble in bringing their complaint to my attention.



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