

Appendix A

Complaint about the the Council relating to development at Ashgate Road.

Summary of Decision

The complainants raised issues about the Council's handling of planning applications and planning enforcement matters at a neighbouring development. The LGO investigator has closed the complaint because he found no fault by the Council.

The complaint

1. Residents of two properties (A and B) complained about the Council's handling of planning applications and planning enforcement matters at a neighbouring development.

2. They say:

- The Council sent a letter to the developer in November 2015 warning him that conditions are a fundamental requirement of the conditional planning permission. No work should have started until the Council's recommencement conditions were discharged but the developer started construction in January 2016.
- The developer increased the ground level towards complainant B's home with the result that the ground level of that plot was level with the top of her seven-foot fence.
- The Council knew the developer was ignoring rules but was reluctant to intervene and allowed the developer to carry on with a cavalier approach.
- Five months after the developer started, planning, planning enforcement and a tree officer visited the site for the first time but did not enforce planning conditions and failed to follow the Council's own rules and guidelines.
- The development control manager met with them in June 2016 at their home but did not intervene.
- Pre-commencement conditions relating to the 2013 outline planning consent and the 2015 reserved matters consent were not implemented by the developer and most of them remain undischarged.
- The site visit for a 2015 reserved matters application was inadequate and consisted of a few heads peering round the sides of an old warehouse. No one viewed the site from the homes of local residents.
- The design and access statements in a 2010 planning application and the

2013 outline planning application clearly showed the fall of land of two metres. However, the Council failed to observe and apply the details from the statements when it considered a reserved matters application in 2015.

- There was no flood risk assessment requested or submitted for the site with the 2015 reserved matters application but one was required for a retrospective application in 2016. The Council did not explain why.
- The finished floor level of one of the plots within the development (plot 3) is level with the top of their home and another neighbouring property and the building is approximately three metres away from the adjoining boundary fence. The ground floor windows overlook their gardens. The Council failed to protect their amenities.
- There are disparities regarding a 2017 planning application but the development control manager said the disparities are insignificant. This means the building in plot 3 will never be in accordance with the approved plans. This is a procedural irregularity on the part of the Council.
- There was no reference to the tree officer's involvement in the review of the layout, architectural, engineering and landscaping drawings for the re-siting of plot 3 in relation to a protected tree in the officers' reports to the committee in the 2016 and 2017 applications.
- Plot 2 at the nearest corner is approximately 3 metres away from and directly faces a rear adjoining boundary contrary to the Council's own guidance.
- The first-floor habitable rooms directly face and are sited closer than the guide distance of 10.5 metres to the boundary of an adjoining residential garden.
- Plots 1 and 2 overpower homes on their street. They are three storey houses which are out of character with the surrounding area. The Council says they are two storey houses with roof spaces and they want to know the difference between that and three storey houses.
- The reports to the planning committees in a 2016 planning application and two 2017 planning applications incorrectly stated the commencement of the development started in mid-2016 when development started in January/February 2016.
- A landscaping proposal was submitted as part of a material amendment planning application in March 2017 but was then removed from the application. The Council's reason for removal of the proposal amounts to procedural irregularity.
- The Council failed to protect adjoining properties from surface water run off/flooding caused by raised ground levels and no drainage system installed.
- At a planning committee meeting on 30 January 2017, the committee asked planning officers if there were any outstanding conditions but officers misled

the committee by saying there were no outstanding conditions.

- At a planning committee meeting on 24 April 2017, the development control manager instructed councillors and objectors on what was not to be considered at the meeting.
- 2 councillors voted for approval of the application at the 24 April meeting out of 8 members. 6 members abstained. What is the purpose of the committee if they hold back from voting.
- The grant of planning consent for plot 3 at that meeting was brought about by one councillor who had previously voted against the development. There had been no changes and he had previously visited their homes and assured them of his support. Code of conduct accountability needs to be investigated.
- The Council did not notify them of the appeal made by the developer against its decisions to refuse planning permissions for developments in plots 1 and 2.
- The planning officer provided them with details of everyone who had expressed an interest in the appeal. The planning officer failed to protect personal details of the public.

What was investigated

3. The LGO investigated allegations concerning the 2017 material amendment applications. The LGO set out reasons in the final section of their letter for not investigating the remainder of the complaints.

The Ombudsman's role and powers

4. The LGO investigate complaints about 'maladministration' and 'service failure'. In the decision on this case the LGO use the word fault to refer to these. The LGO must also consider whether any fault has had an adverse impact on the person making the complaint and this is referred to as 'injustice'. If there has been fault which has caused an injustice, the LGO may suggest a remedy. **(Local Government Act 1974, sections 26(1) and 26A(1), as amended)**

5. If the LGO are satisfied with a council's actions or proposed actions, they can complete their investigation and issue a decision statement. **(Local Government Act 1974, section 30(1B) and 34H(i), as amended)**

6. The LGO cannot investigate late complaints unless they decide there are good reasons. Late complaints are when someone takes more than 12

months to complain to the LGO about something a council has done. (***Local Government Act 1974, sections 26B and 34D, as amended***)

How the LGO considered this complaint

7. The LGO considered the complaint and correspondence provided by the complainants and the Council. The LGO telephoned the complainants to discuss matters.

What the LGO found

Background

8. The Council granted planning permission for proposed residential development within the subject land in 2010. The development comprised 6 houses. In 2013 outline planning permission was granted for the renewal of the 2010 permission.

9. In 2015, the developer submitted a reserved matters application which completed the details of the 2013 outline planning permission on layout, access, scale and appearance of the development. This was approved by the Council.

10. The developer started construction of the properties in early 2016. The developer submitted a planning application to build a house on land adjacent to the subject site in 2016. This was approved by the Council.

11. Applications to discharge conditions 6 on site investigation; condition 7 on drainage, condition 8 on drainage, condition 18 on materials and condition 24 on coal mining of the 2013 application were approved by the Council in 2016.

12. The developer submitted a material amendment of house types and siting of the houses application in 2016. Planning permission was refused by the Council in January 2017.

13. The developer then submitted two material amendment applications; the first proposed a material amendment of house type, siting and landscaping to plot 3 of the planning consent granted in 2015. The second proposed a material amendment to house type on plots 1 and 2 and siting of plot two of the planning consent granted in 2015. The Council granted planning permission for the first application concerning plot 3 and removed (*refused*)

permission for the second application involving plots 1 and 2. The developer appealed. The appeal was allowed by the Planning Inspector.

14. The planning inspector considered the impact of the buildings on plots 1 and 2 on living conditions of neighbouring occupiers with regard to an overbearing effect.

15. The inspector noted the proposed amendments led to an increase in the height of the buildings in plots 1 and 2 by 211 millimetres according to the submitted plans. The inspector said the buildings were around 32 metres from the rear of the complainant's homes according to the submitted drawings. The inspector considered the increased height of the buildings was not readily perceptible at that distance. He said the amendments did not significantly reduce the outlook of the complainants' properties. He noted a proposed reduction in the size of the rear facing first floor windows would provide a modest privacy benefit to the complainants' homes compared to the previously approved scheme. The inspector concluded the amendments do not significantly harm the living conditions of neighbouring occupiers with regard to an overbearing effect.

16. The Council provided a single report to the planning committee on all three plots as both applications were considered by the committee on the same day. The report sets out the Council's consideration of the merits of the applications. The report also set out all objections the Council received to the applications.

17. The Council's comments were detailed and extensive.

18. The report referred to the Council's guidance on minimum separation distance of 21 metres between facing windows of habitable rooms and 12 metres from habitable room windows to blank walls. The report said the complainants' properties have back gardens which measure at least 21 metres in length without taking into account any additional separation offered by the set back of the new houses within the application site. The report accepted the new properties were of a larger scale than the complainants' properties but said the two and half storey scale and finished floor levels they were built at were accepted under previous proposals.

19. The report said the application relating to plot 3 included details of the proposed landscaping and levels treatment to its rear garden. Officers said the detail was required to be considered under conditions 20, 21 and 22 of

the separate discharge of conditions application and so was separate from the material amendments being sought through the application.

Analysis

There are disparities regarding a 2017 planning application but the development control manager said the disparities are insignificant. This means the building in plot 3 will never be in accordance with the approved plans. This is a procedural irregularity on the part of the Council

20. It appears the disparities the complainants refer to are the following:

- The development control manager sent an email to councillors and objectors before the 24 April committee meeting in which he stated the committee would consider the material amendment of the dwellings as built on site (e.g. siting, height, appearance) and the committee would not consider anything to do with conditions. The complainants say conditions were not a separate matter as the applications for material amendments involved removal or variation of a condition.
- The development control manager read out loud an objection letter from a person who lives in Chesterfield but not in the local area and said the objection was not to be taken into account because the objector was not in the local area whereas he read a letter of support from a person in London and did not make the same comment.

21. The LGO does not find fault by the Council in both these matters. The development control manager's reference to the committee not considering anything to do with conditions was aimed at making clear to all that the committee would not consider the longstanding views of the complainants and others about the alleged failure to implement conditions of past planning consents in 2013 and 2015. The development control manager was correct that legally the committee could not consider those alleged failings and could only consider the merits of the application before it.

22. There was no fault because the officer read out an objection letter from someone who does not live near the application and pointed out the objection could not be considered by the committee. This was the correct approach as applied by local planning authorities.

23. The Council did not comment on the complainants' allegation the development control manager read out a letter drafted by someone in London

but did not include the same warning as was given for the objection letter. So the LGO commented that the Council's view on this point was not known. They commented that it may be that the officer did not consider it necessary to make the same point about letters from outside the borough. It may be that the letter was from the applicant's agent based outside the borough. Whatever the case may be the LGO did not consider this point amounts to fault. The LGO did not consider it caused the complainants a degree of injustice that warrants further enquiry by the Ombudsman into it.

There was no reference to the tree officer's involvement in the review of the layout, architectural, engineering and landscaping drawings for the re-siting of plot 3 in relation to a protected tree in the officers' reports to the committee in the 2016 and 2017 applications & A landscaping proposal was submitted as part of a material amendment planning application in March 2017 but was then removed from the application. The Council's reason for removal of the proposal amounts to procedural irregularity.

24. The report to the planning committee stated the detail of landscaping and levels treatment should be part of a separate discharge of conditions application and not included within the material amendments application.

25. This was not fault. Although the developer had submitted a discharge of conditions application in 2016 that application did not include landscaping proposals. So, the Council's view that the developer should discharge conditions relating to landscaping separately is a cogent one.

Plot 2 at the nearest corner is approximately 3 metres away from and directly faces a rear adjoining boundary contrary to the Council's own guidance; The first-floor habitable rooms directly face and are sited closer than the guide distance of 10.5 metres to the boundary of an adjoin residential garden; and Plots 1 and 2 overpower homes on their street. They are three storey houses which are out of character with the surrounding area. The Council says they are two storey houses with roof spaces and they want to know the difference between that and three storey houses.

26. These matters are grouped together because they all make essentially the same point.

27. The Ombudsman is not an appeal body against planning decisions and so, unlike the Planning Inspector, he cannot substitute his judgement for that of the Council in the absence of fault in the decision-making process. The point here is whether the proposals had a negative impact on the complainants' amenities that was not considered by the Council.

28. But the committee report shows officers considered the impact of the proposals on neighbouring amenity. It was then for the planning committee to make a decision based on the information given to it. The committee approved one application and refused the other.

29. The planning inspector considered the merits of the application when the developer appealed. The inspector did not consider the developments had a negative impact on the complainants' amenities. This is significant because an independent planning body reached the same conclusion on the merits of the application as the Council's officers. The LGO was satisfied therefore that the Council properly considered the application.

30. The LGO did not consider an explanation about the difference between two storey and three storey houses is material or necessary.

The reports to the planning committees in a 2016 planning application and two 2017 planning applications incorrectly stated the commencement of the development started in mid-2016 when development started in January/February 2016

31. The reports expressed officers' views that the development started in mid-2016. This may have been factually inaccurate as the complainants say the developer started work in January/February 2016. But this does not mean there was fault by the Council. Not every mistake or error amounts to fault. This is an error which is minor and does not amount to fault.

At a planning committee meeting on 30 January 2017, the committee asked planning officers if there were any outstanding conditions but officers misled the committee by saying there were no outstanding conditions

32. The complainants say here that the development control manager and another officer were asked by committee members whether there were outstanding conditions and they replied no whereas conditions 9 and 11 had

not been submitted for approval by the developer. They say officers therefore misled the committee

33. The committee refused planning permission for the application. The LGO did not consider this point warrants further enquiry by the Ombudsman. If the committee was misled and it still refused planning permission then the LGO failed to see the injustice to the complainants.

2 councillors voted for approval of the application at the 24 April meeting out of 8 members. 6 members abstained. What is the purpose of the committee if they hold back from voting

34. It is for members of the committee to decide on the options they have before them which include voting for the proposal; voting against the proposal; or abstaining. The LGO did not find fault because members abstained. It may be that members decided it would be politic to abstain given the pressures they face from a vocal and determined group of residents but that does not mean there was fault.

The grant of planning consent for plot 3 at that meeting was brought about by one councillor who had previously voted against the development. There had been no changes and he had previously visited their homes and assured them of his support. Code of conduct accountability needs to be investigated

35. The complainants can submit a standards complaint to the Council's monitoring officer who will look into whether the councillor referred to breached the code of conduct. It is not for the Ombudsman to investigate this matter. When the Council's monitoring officer concludes the assessment or the councillor complaints process is completed, the complainants may raise a complaint to the Ombudsman if they consider the complaint was not dealt with properly.

The Council did not notify them of the appeal made by the developer against its decisions to refuse planning permissions for developments in plots 1 and 2

36. The Council says it sent letters to the complainants notifying them of the appeal. The complainants, on the other hand, say they did not receive the letters. They point out no member of their group received the notification letters.

37. The LGO cannot resolve the conflict of evidence here. The Council is not statutorily required to use registered post to send notification letters and so there is no independent means of verifying its claim.

The planning officer provided them with details of everyone who had expressed an interest in the appeal. The planning officer failed to protect personal details of the public

38. In an attempt to show the complainants that the Council sent appeal notification letters to them the planning officer provided them with a list of the people the Council claimed to have contacted.

39. If the Council breached confidentiality in doing so then it is for the persons affected to complain to the Information Commissioner who considers complaints about data matters.

Draft decision

40. The LGO intended to close the complaint because they found no fault by the Council.

Parts of the complaint not investigated

41. The LGO did not investigate the other parts of the complaint involving the conditions attached to the planning consents in 2010, 2013 and 2015. These matters are caught by the time restriction on the Ombudsman's power to investigate complaints.

42. The time restriction applies from a complainant's awareness of the matter being complained about. While the Ombudsman has discretion to accept a complaint for investigation out of time, The LGO had seen nothing in the papers which would have prevented a complaint to this service within the material time. I do not consider there are grounds to accept those matters for investigation now.

Action required

43. No further planning action is required in this case however it is noted that there appears to be a further opportunity for the complainants to complain again to the LGO following an internal investigation regarding Councillors code of conduct as referred to at para 35.