

Section J: Planning

J1: Enforcement

Garage – whether permitted development – delay – unauthorised fence

1. Mr Oak complained that a council:
 - gave wrong advice to his neighbour, Mrs Ash, about the need for planning permission for a garage, and subsequently delayed in taking enforcement action about the garage, which was built without planning permission;
 - failed to take effective action about a fence on Mrs Ash's land, also erected without permission;
 - failed to take effective action about an alleged unauthorised use of Mrs Ash's property for car repairs; and
 - failed to keep him informed of what it was doing.

Ombudsman's view, a different response from the council initially would not have been likely to make any difference to subsequent events.

Planning permission

6. The council took too long to resolve matters. There were long periods in the council's consideration during which little progress was made. For example, the period from receipt of a planning application to its determination was in excess of 18 months. It took about five years from the time when Mr Oak first complained, to the commencement of legal proceedings against Mrs Ash.

Permitted development

2. Mr Oak complained to the council about a double garage which Mrs Ash was building. A planning officer visited the site and advised that planning permission was not required because the building was permitted development.
3. A second officer visited and concluded that the advice was wrong. Mrs Ash was invited to apply for planning permission.
4. The Ombudsman recognised that there were real difficulties in deciding whether the garage was permitted development. This was because of the problems of calculation arising from the demolition of previous structures.
5. The Ombudsman found, however, that the first officer's advice was clearly incorrect. But no injustice arose from this maladministration. Mrs Ash had begun construction without seeking advice from the council and subsequently showed little inclination to comply with the council's attempts to assert planning control. In the

Fence

7. The council advised Mrs Ash that it was considering taking enforcement action to have the fence removed. But there was no evidence of any further consideration of the matter until the Ombudsman raised the point with the council, following Mr Oak's complaint. By then it was too late to take enforcement action.

Unauthorised use

8. Mr Oak alleged that the garage was being used for car repairs. The Ombudsman found maladministration by the council in poor recording of complaints and any action on them. The council served a planning contravention notice. But it decided to take no further action on receipt of a written statement from Mrs Ash's son declaring that all the vehicles were owned by his family and that no business operations were taking place on the premises. The Ombudsman concluded that no injustice to Mr Oak resulted from the maladministration.

Communication

9. The Ombudsman criticised the council for failing to keep Mr Oak informed of progress. For example, after the planning application was received and Mr Oak was notified of it, there was a period of nine months before the council gave him any further information.

Outcome

10. At the time of the Ombudsman's report the council was still considering the garage, following discussions with

Mrs Ash about the possibility of a further planning application. The Ombudsman commented that she expected the council to pursue matters with vigour and, if it did not, Mr Oak could complain again.

11. The council agreed to pay £1,000 to Mr Oak to compensate him for the loss of amenity arising from the garage, the loss of opportunity to take enforcement action about the fence, and his time and trouble in pursuing his complaint.

(Report 99/C/147)

J2: Enforcement

Failure to ensure development was in accordance with approved plans

1. Mrs X complained that a council failed to ensure that a slope on a new housing estate built behind her house was constructed according to the approved plans. Her concerns related to the angle of the slope and its landscaping.
3. The council also offered to tend the site three times each summer, subject to agreement by the developer. Mrs X indicated that she was content with the council's offer to maintain the slope, as long as the promise was given in writing.

Action by the council

2. The council ensured that the developer regraded the slope. The Ombudsman accepted that there were aspects of the development which were not built in accordance with the approved plans, but considered that the regrading produced the best possible physical arrangement of the slope.

Outcome

4. The Ombudsman accepted that the council's actions were a reasonable settlement of the complaint.

(Local settlement 99/C/5627)

J3: Grant of permission

Conservation area – redevelopment – delegated decision system – consideration of objections

1. Three people complained that a council approved plans to redevelop a site which abutted their properties. The development involved the demolition of an existing building within a conservation area and replacement by a much larger building. The complainants said the development would overshadow their homes, block out their light and intrude on their privacy.

The application

2. The application was for planning permission to develop existing buildings into flats and maisonettes and build further residential units on the car park at the rear of the site. The properties of the three complainants were adjacent to the car park end of the site.

3. They complained that the council permitted development much nearer to their properties than the council's guidelines allowed. In the case of Mrs Lee, the gable end wall of one unit was three metres from her house. The council's published guidelines indicated 13 metres as the minimum acceptable distance between a gable end and the windows of habitable rooms in existing properties. The council said that the guidance referred to extensions to new dwellings and was not relevant to this particular case.

Consideration of application

4. The council's arrangement was that certain planning decisions could be taken by officers under delegated powers following consultation with council members. The system required planning staff to prepare a report giving details of the proposed

development, relevant planning policies, a summary of any objections, and a recommendation for approval or refusal with a summary of reasons.

5. The council members had the option of asking for the application to be referred to the planning committee. If no such request was made, the application would be determined by the planning officer or his nominee.

6. The Ombudsman accepted that the development of sites, which are in conservation areas and are surrounded by residential properties, would often present problems for councils and that normal guidelines for distances might not necessarily be appropriate in that context. The Ombudsman also accepted the efficiency benefits of not expecting every application to be determined by members, and the council's argument that it would be inappropriate to send site plans to members with the reports.

7. Those factors, the Ombudsman said, made it all the more important that the reports were sufficiently clear and comprehensive so as to enable members to make well informed judgements about whether to ask for applications to be considered by the planning committee. In this case it was important that members were made aware of the proximity of the proposed development to existing homes. That was clear from the reports in the case of two of the complainants, but not in the case of Mrs Lee.

8. That omission was maladministration. The Ombudsman noted the views of Councillor Y who was the chairman of the committee at the time. It seemed most likely that if the maladministration had not occurred, the application would have been

considered by the planning committee. It was not possible to predict what decision the committee might have reached after consideration of fuller information and site plans, and possibly a site visit. But the Ombudsman thought there was a significant possibility that the outcome would have been different, if only the negotiation of an amendment to the plans to reduce the impact on Mrs Lee's home.

Consideration of objections

9. The application which the council approved was an amendment to an earlier application. Objections had been submitted by neighbours to the earlier application.
10. It was the practice of the council to consider amended applications as new applications and to disregard any objections to earlier applications. But this was not made clear to members of the public. The Ombudsman was concerned about this and commented:

"I can well understand that people who have already submitted objections to a development will expect their arguments to be taken into account when amended applications are considered. Whilst it is legitimate for the council to decide not to consider earlier objections, I consider that it should make this clear to those who have legitimate concerns which they want to be taken into account when the council makes its decision."

Outcome

11. The ownership of the site changed hands and the new owner did not wish to develop the site in accordance with the approved plan. The council was therefore negotiating with the new owner to try to reduce the impact of development on the complainants' amenity. The Ombudsman recommended that, if those negotiations failed, the council should compensate the complainants for any devaluation of their properties as a result of the development. In any event, the council should pay £500 to Mrs Lee and £250 each to the other two complainants.
12. The Ombudsman noted that the council was revising its procedures and expressed the hope that officers' reports in future would always include relevant distances between proposed development and existing properties, so that members could more accurately judge the impact on neighbours of any new development. The Ombudsman also hoped that the council would make clear to people affected that objections to earlier applications would not be taken into account when later applications, whether new or amended, were submitted.

(Report 99/C/2745 et al)

J4: Grant of permission

Redevelopment – effect on existing property

1. Ms X complained that a council failed to take into account the effect of a new housing development on the amenity of her property.
2. Ms X was a council tenant. Part of the estate on which she lived was proposed for redevelopment as a housing action trust estate. Ms X's property was not part of the area proposed for redevelopment.

and living room. The Ombudsman thought that, if proper consideration had been given to the impact on her home, the council could and would have sought amendments to the proposals which would probably have led to the house on the adjacent plot being set further back so as to minimise its impact.

Investigation

3. After considering the evidence from the council's files and an interview with the case officer, the Ombudsman took the view that the council had failed to take proper account of the effect that the proposed development would have on Ms X's home, and that the development did not meet the council's normal planning standards.
4. The development had caused loss of daylight and sunlight to Ms X's garden

Outcome

5. The council accepted that there had been an adverse effect on Ms X's home as a result of the failure to give proper consideration to the impact of the new development.
6. The council agreed to pay compensation of £1,000 to Ms X to recognise her continuing loss of amenity, and £200 for her time and trouble in pursuing her complaint.

(Local settlement 99/A/2945)

J5: Grant of permission

Road haulage depot – temporary permission – conditions – sub-committee's decision not correctly implemented

1. Mr Tree complained about the actions of a council in granting planning permission for a road haulage depot.

caused the residents annoyance, particularly at night.

Circumstances

2. Mr Tree lived beside a rural road used by lorries from a road haulage depot at a farm. There were some 40 other local residents. The lorry movements

Planning application

3. Use of the farm as a road haulage depot first started without planning permission. Following a complaint, the council invited the operator to make a retrospective planning application for

change of use. The operator submitted an application.

4. Officers recommended the planning sub-committee to grant permission subject to conditions suggested by the highway authority. These included that the permission should be for two years only; that the movement of lorries should be restricted, including restriction on movements to the hours of 7.45 am to 6.30 pm on weekdays; and that there should be an agreement with the highway authority about highway works.
5. The planning sub-committee decided to grant planning permission subject to such conditions.
6. A planning officer subsequently had discussions with the operator. There was no record of what took place in any of the discussions.
7. The planning officer issued a planning permission decision notice. This did not include any conditions about hours of use or restricting the planning permission to a temporary period. The notice was issued more than a year after the sub-committee's decision.
8. Mr Tree did not find out until about two years later that the planning permission was permanent and not subject to restricted working hours.

Fault

9. The planning officer did not have delegated authority to issue a planning permission which was contrary to the decision of the sub-committee. The Ombudsman found that to do so was maladministration.
10. This had serious and lasting consequences for local residents.

Outcome

11. The Ombudsman recommended that the council should:
 - make Mr Tree a payment of £1,000 for his loss of amenity in the period when disturbance from lorry movements was greatest and for his time and trouble in pursuing the complaint;
 - consider whether planning permission could be revoked or revised to include a condition restricting hours of use; or if that was not practicable, pay compensation to Mr Tree for any devaluation of his property as a result of there being no restriction on hours of use; and
 - identify other residents in the same position and consider how best their injustice could be remedied.

(Report 99/B/1763)

J6: Grant of permission

Amended application – failure to notify neighbours – inadequate records

1. Mr and Mrs Scott complained that a council did not deal properly with a planning application for development on land adjoining their home.
2. They were aggrieved that they were not notified of amendments to the planning application which affected the property nearest their home. As a result, they were unable to comment on the changes to the original siting of the dwelling before consent was granted.

What happened

3. Mr and Mrs Scott and 98 of their neighbours received a letter from the council informing them that detailed plans had been received for development proposed on land adjacent to their homes.
4. Mr and Mrs Scott inspected the plans. They considered the proposed development was reasonable from their point of view. Neither they nor any of their neighbours made objections to the proposed scheme.
5. The case officer was not entirely happy with the proposed scheme. He wrote to the developer suggesting that both the layout and the design of the houses could be improved.
6. The developer submitted revised plans. These showed the flank wall of the nearest house to Mr and Mrs Scott's house closer to their rear windows than on the original plan.
7. The council gave no publicity to the amended plan. When Mr and Mrs Scott later complained, the council accepted that they should have been consulted on the revised plan and apologised that this did not happen.

The Ombudsman's view

8. The Ombudsman considered that Mr and Mrs Scott should have been given the opportunity of commenting on the revised scheme. That scheme had a greater impact on their amenities than the plans originally submitted. The council's failure to notify Mr and Mrs Scott of the amended plans was maladministration.
9. The council argued that there was no prospect that a different decision would have been reached, even if Mr and Mrs Scott had made strong objections to the revised scheme, because the impact of the proposed dwelling on their amenities was not sufficiently detrimental to warrant a refusal of planning permission. There was evidence from the developer that he would not have agreed further amendments to the scheme. In the circumstances, the Ombudsman accepted that planning permission would still have been granted.
10. However, the Ombudsman considered that Mr and Mrs Scott had a justified sense of outrage because they were denied the opportunity to have their views taken into account when the decision was taken. They were also put to considerable time and trouble in pursuing their complaint with the council and with the Ombudsman.
11. The Ombudsman recommended that the council should pay Mr and Mrs Scott £500.

Record keeping

12. The Ombudsman considered that the council's record keeping was not satisfactory, although this point may not have had any direct bearing on the complaint. The Ombudsman commented:

“The public should have confidence that planning decisions are soundly based on all the material planning considerations. It is, therefore, important that there is a written file record to show how a scheme was assessed and the factors which were taken into account in determining its acceptability or otherwise.”

13. The case officer made no such notes and consequently it was difficult for him to recall with certainty whether he fully appreciated all the effects of changes to the layout of the development.

(Report 00/B/235)

J7: Grant of permission

Conservation area – multiple errors

1. Six households complained about the way a council granted planning permission for the development of a site close to their homes.
 2. The complainants lived in a conservation area. Mrs Avon and Mr and Mrs Severn lived on either side of a site formerly occupied by a garage, shop and offices. The site bordered a harbour. The other complainants lived nearby.
 3. The complaint related to permission to build a two storey 1930s style seaside house.
- The case officer’s site assessment was inadequate and did not fully evaluate the impact of the new development on neighbours.
 - No details of ground or floor levels were obtained, even though one of the officers involved thought it important that the height of the new dwelling did not exceed the height of the existing buildings.
5. The Ombudsman considered that the implications of some of the council’s maladministration were serious. Because it failed to establish finished floor or ground levels, the council had no means of determining how high the new house would be in relation to surrounding properties or to what had previously been on the site.

Errors

4. The Ombudsman said that the council’s consideration of the planning application was notable for a series of administrative errors.
- The council failed to ensure that the Environment Agency and English Nature were given the opportunity to comment on development at an environmentally sensitive location.
 - There were few records of meetings or discussions, which made it difficult to determine how or why decisions were reached.
6. Views about the height of the building as compared with the previous building varied. But, taking account of all the views, the Ombudsman thought the weight of opinion was that it was at least two metres higher than council officers thought it would be.
 7. Following a complaint from Mrs Avon about the proximity to her property of a window and balcony, the case officer negotiated with the developer a significant change of position. But

the case officer did not comply with the council's requirement that material amendments to approved plans were to be the subject of a fresh planning application. The Ombudsman did not think this maladministration caused injustice because it brought about an improvement for Mrs Avon without unreasonably affecting any other neighbours.

Injustice

8. The Ombudsman considered that all the complainants could feel some justifiable outrage at the council's mishandling of the planning application. All had gone to some avoidable time and trouble in pursuing their justified complaints. And they had to live with a building which was almost certainly higher than the council ever envisaged it would be.
9. The injustice was particularly significant for Mrs Avon, who lived closest to the new development.

Remedy

10. The Ombudsman recommended that the council should commission a survey of Mrs Avon's property to determine the difference in value as it was and as it would have been had the new building been two metres lower, and pay the difference, if any, between the two valuations.
11. The Ombudsman also recommended that the council should pay £250 to each household as some recognition of their disappointment and time and trouble.

(Report 99/B/2999 et al)

J8: Grant of permission

Publicity – neighbours resident in another borough

1. The occupiers of eight residential properties complained about the grant of planning permission for development at a site to the rear of their homes. The complainants said they were not notified of the proposed development so were not given the opportunity to object to it.
2. To the rear of the complainants' homes there was a playing field. That was the site of the development relevant to these complaints. The site was used by a school as a playing field.
3. The school made a planning application for the replacement of pavilions and conversion of a former groundsman's cottage.
4. The planning officer sent notification letters to those householders who were resident in the borough. He did not send notification letters to residents who lived in a neighbouring borough. He notified the neighbouring council and assumed that it would notify its own residents. This was in accordance with his council's practice.
5. The school submitted new plans showing an access road running along

What happened

the boundaries of the site and immediately behind residents' gardens. The planning officer did not send notification of the amended plan to any neighbours. So even those residents who had been notified about the original application were not notified about the proposed access road. No objections were received, so the application was dealt with under the council's scheme of delegation. Planning permission was granted.

Notification

6. The government circular giving guidance on publicity for planning applications made no distinction between neighbours who lived within a council's area and those who lived on the other side of the council boundary. Neither did the council's internal guidance for staff make any such distinction.
7. The Ombudsman commented:

"This complaint has raised an issue of some public interest in exposing that it

is clearly wrong for councils to consider that their neighbour notification responsibilities stop at the borough boundary. They do not, and that is an important lesson for this council, and possibly others, to learn."

Outcome

8. The planning situation at the site became more complicated because of further applications from the school and a pending planning inquiry, so that the status and design of the access road could be affected. The injustice to the complainants could not safely be assessed before matters were resolved.
9. The Ombudsman therefore recommended that the council should make a payment of £250 to each complainant to recognise their upset, anxiety, time and trouble; and discuss with the Ombudsman whether any further injustice had arisen when the final planning outcome for the site was known.

(Report 99/B/1497 et al)

J9: Grant of permission

Inadequate report – material planning considerations not presented

1. Mr A and three of his neighbours complained that a council wrongly granted planning permission for a residential development at the rear of their properties. They said one of the dwellings, a five bedroom house, was too close to their rear boundaries.
2. They complained that committee members were not made aware of all the relevant facts when they made their decision. In particular, they complained that members were not

informed of residents' concerns, set out in a petition, about overlooking and overshadowing, and that the proposal breached one of the council's adopted standards in its planning guidance.

Petition

3. The report to committee stated that a petition had been received objecting to the proposed development. The report said that residents raised

concerns about the security of their rear gardens.

4. But the report did not mention that the petition also referred to residents' concerns that overlooking and overshadowing of their properties would occur.

Guidance

5. The council's guidance required a distance of 10 metres between the two storey dwelling and the rear boundary of the neighbouring properties. The proposal allowed only seven metres.
6. The report to committee did not mention the requirement of the guidance.

The Ombudsman's view

7. The Ombudsman said it was maladministration not to inform members of the committee about the extent of the residents' concerns and the breach of the separation guideline. These were material planning considerations and should have been presented to members to enable them to make a properly informed decision.

Effect

8. The Ombudsman accepted that the failure to mention concerns in the petition about overlooking and overshadowing probably did not affect

the outcome. This was because the evidence from the members interviewed in the investigation was that these points were considered by members and taken into account.

9. But the failure to refer to the breach of the separation guideline was more significant. Some members believed that the committee would not have approved the application if this information had been presented. The Ombudsman believed that members would not have approved the application as submitted if the maladministration had not taken place, and would have required officers to seek an amendment to the scheme so as to comply with the guideline.

Remedy

10. The Ombudsman recommended that the council should:
 - seek an independent valuation of Mr A's home, and those of his three neighbours, both with and without the five bedroom house in the position it occupied;
 - pay an *ex gratia* sum to Mr A and his neighbours equivalent to the difference, if any, in value; and
 - pay Mr A £250 in recognition of his time and trouble in bringing the complaint to the council and to the Ombudsman.

(Report 99/B/525)

J10: Grant of permission

Publicity – vacant site – information for committee

1. Mr Vestry complained about the way a council dealt with two planning applications for the erection of a domestic store on land adjacent to his own.
2. He complained, in particular, that he was not notified of the first planning application and so could not make his objections known; and that the planning committees which approved both applications were not aware of the proximity of the development to the house he intended to build on his land.

Publicity

3. The council received a planning application to demolish some existing structures and build a garage and store.
4. The council posted a site notice. In addition, it sent letters of notification to a number of houses in the vicinity of the site.
5. Mr Vestry's land was undeveloped. He had bought the plot with the benefit of full planning permission for a detached bungalow which had been granted to the previous owner.
6. Mr Vestry knew nothing of the application until the owner of a neighbouring property contacted him to ask what he was building at the bottom of his garden. Mr Vestry found that the new development was some 1.8 metres from the boundary of his plot. He complained that the council should have ensured that he was notified of the application.
7. The council said that, as the plot was undeveloped, it was impossible to post a neighbour notification and it was unreasonable to expect officers to attempt to trace the owners of vacant

land. The council said that the planning file for the plot would only have revealed the planning application submitted by the previous owner.

8. The Ombudsman accepted the council's view that it was unreasonable to expect the council to track down the owners of vacant land in order to notify them of planning applications on nearby land.

Committee report

9. The Ombudsman was, however, critical of the fact that the report to the planning committee about the application did not mention that there was an extant planning permission for a bungalow on Mr Vestry's plot.
10. The Ombudsman considered it likely that, if the planning committee had been properly informed of the planning permission for development on Mr Vestry's land, it would not have approved the storage shed so close to the boundary.
11. The Ombudsman was not critical of the way the council handled a second planning application. That second application was required because it was found that the shed was not being built in accordance with the approved plans.

Outcome

12. The Ombudsman considered that the injustice to Mr Vestry was the lost opportunity to have the storage shed located further away. The council was recommended to pay Mr Vestry £2,500.

(Report 99/C/920)

J11: Grant of permission

Development in countryside – unitary development plan – personal circumstances

1. Mrs Robertson complained that a council granted planning permission for development in the face of contrary advice from planning officers and expert consultees.

The development

2. Mrs Robertson lived in a village in a rural part of the council's area. The site in question was close to the village. The application was for the construction of a bungalow.

3. Mrs Robertson walked on a public right of way which in her view would be affected by the proposed development, and she was also more generally concerned about the implications for the protection of the countryside if the application was allowed. She therefore objected to it.

4. The occupier of the land, Mr Snow, was a smallholder. He had temporary planning permission for a residential caravan on the site, but permission for the caravan on a permanent basis was refused. He then sought planning permission for a bungalow.

5. The policies of both the Government and the council indicated that a planning application for a dwelling on agricultural land should normally be allowed only where there was a financially viable business with a demonstrable requirement for a full-time worker who needed to be on the site at most times.

6. The council sought an independent expert assessment from an agricultural consultancy. The conclusion of that assessment was that the enterprise was not viable, and that the need for a full-time worker was not demonstrable.

7. The Environment Agency drew the council's attention to the risk of flooding in the area and advised that the proposed development was unacceptable.

8. The arguments put forward on behalf of Mr Snow were that the enterprise did not fall far short of what was required, in that it needed three-quarters of a worker and generated enough income for a self-employed person, although that might be less than the wages of a skilled stockman.

9. The planning officer recommended refusal. Members of the development control panel were divided in their views but by a majority vote approval was given.

10. Having considered the comments of the individual panel members, the Ombudsman had little doubt that the major factor which persuaded the majority of the panel to approve the application was sympathy for the applicant. They believed Mr Snow deserved a chance and should be helped. The Ombudsman could understand that, but noted that the council's supplementary planning guidance made it clear that applications had to be determined by reference to the needs of the enterprise and not those of the applicant. The permission for the dwelling was contrary to council policy as expressed in the unitary development plan and the supplementary planning guidance. The Ombudsman commented:

"The courts have held that the personal circumstances of the applicant can in exceptional circumstances amount to a material consideration which might justify a decision not to follow the provisions of the unitary development plan. In my view there would have to

be a very strong case to justify a decision which did not conform with council and Government policy, and which conflicted with advice from a government agency. If the panel believed that this was the situation here it should have stated clearly what that case was and why it had decided to accept it."

11. There was no such statement. The panel's failure to justify its decision was maladministration, and raised a substantial doubt as to whether the application was properly considered.

Outcome

12. The Ombudsman did not think there was a direct personal injustice to Mrs Robertson, but recommended that the issues raised by the complaint should be addressed in the training provided for members of the development control panel.

(Report 99/C/3664)