

REPORT FOR DECISION

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	24 January 2017
SUBJECT:	PLANNING APPEALS
REPORT FROM:	HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER:	DAVID MARNO
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined - Local Government Ombudsman final decision <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report and appendices
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-

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**Planning Appeals Lodged
between 12/12/2016 and 15/01/2017**



Application No.: 60359/ADV

Appeal lodged: 10/01/2017

Decision level: DEL

Appeal Type: Written Representations

Recommended Decision: Refuse

Applicant: Insite Poster Properties Ltd

Location Gable of 37 Walmersley Road, Bury, BL9 5AE

Proposal Replacement of existing 48 sheet advertising display with 48 sheet LED display

Total Number of Appeals Lodged: 1

Complaint reference:
16 007 411

Complaint against:
Bury Metropolitan Borough Council

The Ombudsman's final decision

Summary: There was no fault in the way Council officers processed the planning permission for six houses near Mrs X's property, or how the Planning Control Committee Members decided to grant the permission. Even if there had been fault which would have resulted in a different planning decision, the development causes no significant personal injustice to Mrs X.

The complaint

1. Mrs X complains about a planning application for six new properties. The site is opposite her property on road A, on a downhill slope. Most of the site was previously used for parking by local residents and contained 15 individual garages.
2. Mrs X complains the Council failed to follow many laws and its own policies while processing and granting the planning permission. She is concerned about the impact of the development on many aspects of the local area, in particular parking, traffic, wildlife, the bordering Conservation Area, and the amenity of existing residents' properties.

The Ombudsman's role and powers

3. 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)*)
4. 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)*)
5. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

How I considered this complaint

6. As part of the investigation, I have:
 - considered the complaint and the documents provided by Mrs X, which included documents produced by the Council;

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- considered relevant planning documents online;
 - issued a draft decision, inviting comments from Mrs X and the Council, and considered replies received.
7. Mrs X has raised many complaints and allegations against the Council's officers and the Members on the Planning Control Committee who had been involved in the matter. I have focussed my investigation on those issues which Mrs X raised in her Ombudsman complaint, with emphasis on matters which have most potential to cause her a significant personal injustice.
 8. I note Mrs X is one of many local objectors to the planning application, and wrote one letter I have seen to the Council in January 2016 which she signed on behalf of a local residents' group. But her complaint to the Ombudsman is made on her own behalf and not as a representative for any other person or group. I have dealt with her complaint on that basis.

What I found

Notification of original application

9. Mrs X says there were never any site notices posted for the original application. The Council says officers put up the appropriate notices at the correct time. The Council also advertised the application in the local press, and sent notification letters to many nearby residents.
10. I am not required to make a finding on the issue of whether the Council posted the site notices. This is because the Ombudsman's investigations of complaints consider whether there has been fault which has directly led to a significant personal injustice to the complainant.
11. The significant injustice someone could be caused by a council's failure to post a planning site notice would be if, as a result, they missed their opportunity to comment on the application. The evidence shows Mrs X received the letter the Council sent telling her of the planning application.

Documents not on the planning portal

12. It is not fault for a council to not have all planning documents online. The documents are always open for public scrutiny at council offices. This is obviously not as convenient as the same documents being online, but it fulfils a council's duty to make planning documents available to the public. There is no evidence I have seen to show the Council restricted appropriate public access to the relevant documents at its offices.

Consultation period

13. This part of Mrs X's complaint is about a time in the planning process when the formal consultation period had passed. The developer amended the original plans to reduce the number of houses from seven to six, and add a small car park to the north of the site. The Council's officers considered this amendment to be insufficiently significant to need a second application from the developer.
14. The officers were entitled to make that decision, using their professional judgement. I have not seen any evidence to show their decision to treat the amendment in this way involved any fault. I recognise Mrs X disagrees with their view, but it is not fault for a council's officers to have a view or make a decision with which someone disagrees.

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15. The amended plans did not trigger a new application needing further public notification and consultation. So there was no formal date by which the Council had to collect further public comments before the planning matter progressed.
 16. In any event, the Ombudsman's role is to consider the impact of a council's actions, and to find out whether it caused an injustice. The evidence shows the Council put before the Planning Control Committee the representations made about the scheme before that Committee's Members made the planning decision. So even if I had found there was fault here, I do not consider it would have caused injustice to Mrs X. Her objections were before the Members for their consideration. There is no evidence I have seen showing fault by the Council collating the objections and comments had any bearing on the Committee decision. I do not intend to investigate this part of Mrs X's complaint further.

Impact on amenity

17. The Council's report considers the impact on amenity of local properties and decides the impact is not enough to warrant a refusal decision. Officers identified the relevant separation distances between existing and the proposed properties, and found them to be within the Council's policy thresholds. I have not seen evidence of fault in this assessment.

Officer report

18. Mrs X considers the officer's report to the Planning Control Committee was flawed for three key reasons:
 - a) The objections to the application were not properly summarised;
 - b) The report did not mention the many breaches of policy which would follow granting of the permission;
 - c) The report failed to include photographs sent in by objectors, and misrepresented the problems which the development would cause.
19. The officer was entitled to use their professional judgement to decide the contents of the report. The purpose of the report is to summarise the objections received. As a summary, it will not give those objections in detail. I do not consider the officer's summary of the objections amounts to fault. The report lists the objections and sets them out suitably and without misrepresentation.
20. The Council disagrees with Mrs X's arguments and claims the planning application, and the process followed to decide it, resulted in breaches of law and policy. So I would not have expected the Council officer's report to the Committee to have set those out.
21. It was for the Council's officer to decide what photographs to include in their report to the Committee. It is not fault for an officer to make those decisions. I recognise Mrs X considers the photographs chosen are not sufficiently supportive of her opinion of the development's impact. But it is not the role of the officer report to support her or any other objectors' position.
22. The Committee Members had before them the full versions of the objections, including the claims of policy breaches, the objectors' expert report, and all the photographs. It was for each Committee Member to decide if any of the objections and the evidence in support of them gave relevant and sustainable grounds to refuse the permission. The Committee voted to grant the permission. It was not fault for the Committee to make a decision with which Mrs X or other objectors disagreed.

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23. The Committee also visited the site. So they were not reliant on photographs when assessing the application. Mrs X says Members only visited in response to the many objections received. It is not fault for a Committee to decide to visit in response to local people's concerns. That is a legitimate and common reason for such visits to take place.
24. Mrs X also criticises the visit for not being on a day and at a time when she believes the impact of the development would be most obvious. It is not fault for a Council Committee to organise a visit for when as many Members as possible can attend.

Online objections

25. Mrs X complains the Council categorised 87 objecting responses to the application as "neutral", and grouped them as a petition, not individual objections. Mrs X says this misrepresented the level of local opposition to the scheme.
26. The Council accepts it should not have described the responses as neutral, but remained of the view that they amounted to a petition. This was because the letters from 87 people were copies of the same standardised letter.
27. I consider the receipt of 87 standard objection letters is directly comparable to a petition containing 87 names. Those individuals have repeated objections and comments written by someone else, and put their name to them. This is the same as their signing a petition. I do not consider it was fault for the Council to group these letters in this way.
28. It was unfortunate the Council incorrectly categorised the 87 letters on the website. But I do not consider this issue would have had any bearing on Members' consideration of the application. Members were not reliant on the website for their information about the application. The Officer's report also set out the objections in the standardised letter for Members. The Members also had access to all objections, including the 87 standard ones. So Members had the information available to allow them to reach their own conclusions about the letters, and the strength of local feeling they showed.

Ecology report

29. The Council sought the views of the Greater Manchester Ecology Unit (GMEU) to consider the ecological issues raised by the application. Mrs X says the Council should not have relied on the GMEU's response because she considered it flawed and contradictory.
30. Councils cannot control the content of a planning consultee's response. Where a council wants to clarify part of a response, officers may wish to contact a consultee again. When the development plan was amended, officers re consulted. It was then for officers to decide, using their professional judgement, and Committee Members when making the planning decision, what weight to give to the GMEU consultation. I have not seen fault in the way the planning process took account of the ecology information.

Policy considerations

31. Mrs X says the Council has not taken into account the relevant Conservation Area Policy, Car Parking and Road Traffic Policy.
32. The Council's officer's report to the Committee explains how they took each of these policies into account. I do not find officers ignored those policies. I recognise Mrs X does not agree with the recommendations the officer made on those issue when reporting to the Committee. But as explained above, if the

Committee Members had concerns on those matters, they could have sought further information or clarification. Enough Members were satisfied by how the officer's report assessed those issues, and they determined none of the matters gave grounds for the Council to refuse the permission. I have not seen fault by the Council's officers or the Committee's Members here.

Complaint process

33. Mrs X says the Council was wrong to have a senior planning officer deal with her complaint. Mrs X considers the officer lacked the appropriate objectivity and neutrality to deal with a complaint about their own officers.
34. It is for councils to decide which staff they employ to consider complaints. It is not fault for a council to have an officer from the department complained of deal with complaints about that type of work. Such officers will have the relevant knowledge of the subject to consider matters.
35. A council's investigation of a complaint made against it is not designed to be objective. The complaint process is not an independent or neutral one. A council is allowed to defend its earlier actions and reach its own views on complaints it receives. It is not required to change its original view or agree with a complainant.
36. Mrs X was entitled to bring her complaint to the Ombudsman, who is independent of both her and the Council, to ask the Ombudsman to consider the Council's actions and responses to her complaint.

Injustice

37. I have not found fault in the Council's officers' and Committee Members' actions. The Council and the Committee considered appropriately matters such as highways, parking and ecology affecting that wider area. But even if I had found fault, I have not seen evidence that this planning matter causes Mrs X a specific and significant personal injustice.
38. Where a complaint is brought by someone on their own behalf, it is the remit of the Ombudsman to investigate whether the complaint demonstrates fault by the council which directly results in significant personal injustice to the complainant. A finding of fault causing no injustice to the complainant is not sufficient grounds for an Ombudsman investigation to proceed.

Impact on Mrs X's property

39. The key potential significant personal injustice for any complainant in a planning matter is the harm a development may have on their own home. From the evidence I have seen, there is no significant planning harm caused here to Mrs X.
40. I say this because Mrs X's property is across road A and some further distance away from the nearest portion of the development. The separation distance between Mrs X's property and the new build complies with the Council's policy, the Supplementary Planning Document 6 (SPD6), exceeding the appropriate distance by one metre. The blank wall of the proposed house's gable end faces Mrs X's house. So officers determined the location and orientation of the development would not cause any overbearing effect, overlooking or loss of privacy to Mrs X. The development plot also sits on a slope, which falls away from the frontage of Mrs X's house. The new properties would sit lower than Mrs X's property. This further reduces the impact of the new houses on Mrs X's home, particularly for overlooking or overbearing.
41. Mrs X says the new properties are too close to existing houses to the west on road B, and have been found to breach the Council's SPD6 policy. Mrs X says the

actual separation distance between the existing properties and the new development is 20 metres, but the required separation distance is 23 metres. She says the Council has not taken account of the differences in floor levels in the existing houses and the new ones, which means the additional 3 metres is required for the development to comply with the Council's policy.

42. But this matter relates only to houses in road B. It raises no issue of impact on the amenity of houses in road A where Mrs X lives, so can cause no personal injustice to her. So even if there was fault by the Council in granting the permission, there are no grounds for the Ombudsman to investigate this part of the complaint further.

Car park

43. Mrs X says the site's car park breaches the Equality Act 2010, and the Council's Public Sector Duty under section 149 of that Act. She believes this because the land on which the development's car park is located is very steep, which means elderly or disabled people, or people with children, would not be able to use it. Mrs X believes as a result the car park is discriminatory against those people.
44. Mrs X's complaint is on her own behalf. She is not complaining on behalf of any of the local residents, a number of whom she describes as disabled, elderly or with young children, and does not describe herself as being a member of any of those groups.
45. So even if there has been fault by the Council on this point, the proposed car park causes no personal injustice to Mrs X. Applying the Ombudsman's remit, there are no grounds for my investigation into this matter to proceed.
46. It is not the role of the Ombudsman to make determinations on issues of law. So I make no finding here on Mrs X's allegation that the Council has breached the Equality Act.

Final decision

47. I have not found fault by the Council and do not uphold the complaint. I have completed my investigation.

Investigator's decision on behalf of the Ombudsman