

REPORT FOR DECISION

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	22 May 2018
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 <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined <p>Ombudsman draft decision</p>
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 Ombudsman draft decision

Item for Noting:

The attached document are the draft findings from the Ombudsman in relation to case 61128 – 17 Avon Drive, Bury. This was a proposal for a 'First floor extension at side, single storey extension at rear and conversion of existing flat roof at front to pitched'.

The neighbour had objected to the scheme on the grounds of loss of light to two windows in the ground floor side elevation, which one served a kitchen and the other a dining room, but both were interlinked creating a kitchen diner layout.

The application was duly approved, with the findings of the case officer described in the report following a site visit and meeting on site with the objector including viewing the proposals from within the objector's property.

Two complaints followed using the Council's complaints procedures. Remaining unsatisfied with the responses, the objector referred the matter to the Local Government Ombudsman. The draft findings are attached.

The Ombudsman stated *“The officer’s report on the proposal says that it is not reasonable to refuse the extension on the grounds that Mr B’s property is relying on light to a window on the side elevation of his property. This could be wrongly interpreted as the impact on side windows is not relevant to the planning decision. The report does not clearly explain why the officer considered the proposal would not significantly reduce the amount of daylight or sunlight to Mr B’s home. This was fault. However, I consider the report to be poorly worded, rather than evidence that the Council failed to consider the impact of the proposal. I am satisfied that the officer did consider the impact on these windows when she visited Mr B’s home, viewed the site from inside his home and took photographs of the affected areas and outlooks. I do not consider it likely that Mr B would have pursued his complaint if the officer’s report had clearly explained why she did not consider the proposal would significantly reduce the amount of daylight or sunlight to Mr B’s home.”*

In formulating her views, the Ombudsman’s recommendations are to take actions to prevent similar failings in the future, which means some clarification within the Supplementary Planning Document 6 (SPD6) is required in setting out not only what a main/principal elevation is, but importantly, what is not. This would assist in ensuring that officer reports are clear in their findings on this point. Furthermore, the Ombudsman has recommended that the complainant be awarded £100.00 for time and trouble in bringing this matter forward.

As a result of this recommendation, the Development Management Team are already in the process of updating SPD6, which this matter in particular, together with other changes, shall incorporate. It is a legal requirement that there is public consultation in order to update this substantive planning document and it is anticipated that this will be completed in the Autumn 2018. There is also no objection to the pay award recommended.

3.0 CONCLUSION

That the items be noted.

List of Background Papers:-

Contact Details:-

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The Ombudsman's draft decision

Summary: The Council failed to clearly explain in its report on a planning application why it considered the proposal would not significantly reduce the amount of daylight or sunlight to Mr B's home. The Ombudsman has recommended that the Council pay Mr B £100 for his time and trouble pursuing the complaint, and take action to prevent similar failings in future.

The complaint

1. Mr B complains that there were failings in the way the Council determined a planning application for an extension to his neighbour's property. In particular, that it failed to properly consider his objection relating to loss of daylight and sunlight to his home.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We 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, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I have:
 - considered the complaint and the documents provided by the complainant;
 - discussed the issues with the complainant;
 - made enquiries of the Council and considered the comments and documents the Council has provided; and
 - given the Council and the complainant the opportunity to comment on my draft decision.

What I found

6. Mr B and his neighbour both live in detached houses with adjoining single storey garages to the side. In February 2017, Mr B's neighbour applied for planning permission to erect a single storey rear extension and a first-floor side extension above the garage.
7. Mr B objected to the proposal. He said that the proposal did not comply with the Council's policies in relation to loss of light or separation distances and would significantly reduce the amount of sunlight and daylight to his home. Mr B produced tests suggested by the Building Research Establishment (BRE) in loss of light cases. He considers they show that the proposal was likely to severely overshadow the side windows to his kitchen/diner and that further detailed assessments were needed.
8. The officer's report on the proposal includes a summary of Mr B's objection, but it does not refer to the BRE tests he submitted. The report states that the policy on separation distances applies to windows on main aspects only, which are to the front and rear of the house. It accepts that the proposal would impact on the light to two windows on the side elevation of Mr B's property, particularly the one to the area used for dining. But the officer did not consider it would be reasonable to refuse the application due to the impact on these windows. The Council decided to grant planning permission in March 2017.
9. Mr B considered taking legal action against the Council and needed a copy of the officer's report on the proposal. As it was not available online, Mr B had to contact his Councillor to obtain a copy of it. Mr B says that he also received a letter from the Council which said that it would publish his objection online but it did to do so.
10. The extension has now been built. Mr B says that it affects the light to five windows on that side of his house, and in particular, the two large windows serving his kitchen/diner. Mr B considers the Council failed to properly consider his objection to the proposal and how it would affect his home.

Analysis

11. When we investigate a complaint about a planning decision we consider whether there has been any administrative fault in the way the application has been decided which may call into question the decision. We do not consider the application afresh on its merits; we look only at the process followed by the Council when it reached the decision.
12. When a Council considers a planning application it should consider the impact it will have on neighbouring properties. But it is not the case that planning permission must be refused if development will have an adverse impact on other properties. The Council must assess the degree of impact and decide if it is so great that the application should be refused. This is a judgement the Council makes taking into account all the relevant information. Provided the Council carries out the assessment properly, then we cannot question the decision that has been made.
13. Planning law requires local planning authorities to determine applications for planning permission in accordance with the development plan, unless material considerations indicate otherwise. Loss of light and overshadowing can be material planning considerations.
14. I have considered the Council's development plan, and in particular, 'Supplementary Planning Document 6 - Alternations and Extensions to Residential Properties'. Paragraph 3.1 contains general guidance for all domestic

extensions and states that “any application for a domestic extension will not normally be permitted unless the proposal...does not significantly reduce the amount of daylight or sunlight enjoyed by neighbouring properties”.

15. The officer’s report on the proposal says that it is not reasonable to refuse the extension on the grounds that Mr B’s property is relying on light to a window on the side elevation of his property. This could be wrongly interpreted as the impact on side windows is not relevant to the planning decision. The report does not clearly explain why the officer considered the proposal would not significantly reduce the amount of daylight or sunlight to Mr B’s home. This was fault. However, I consider the report to be poorly worded, rather than evidence that the Council failed to consider the impact of the proposal. I am satisfied that the officer did consider the impact on these windows when she visited Mr B’s home, viewed the site from inside his home and took photographs of the affected areas and outlooks. I do not consider it likely that Mr B would have pursued his complaint if the officer’s report had clearly explained why she did not consider the proposal would significantly reduce the amount of daylight or sunlight to Mr B’s home.
16. Mr B says that the BRE tests he carried out showed that further detailed daylight and sunlight tests were required. Mr B considers the Council should have required his neighbour to carry out these further tests. The Council only has a duty to consider the effect of the development on Mr B’s property. It is for the Council to decide what information it needs to make its decision, and whether to apply the BRE guidance.
17. The Council’s checklist criteria states that sunlight/daylight assessments are required where the application is for a new building of four or more storeys in height, where the application site itself is subject to significant shading or where specified through pre-application advice. These criteria did not apply in this case.
18. Article 34(6) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 states that the evidence the planning authority requires the applicant to include in the application should be “reasonable, having regard, in particular, to the nature and scale of the proposed development”. The Council considered the loss of light to Mr B’s property and decided that it did not need any further tests to be carried out to reach a view on the impact of the proposal. This is a decision the Council is entitled to make. I have found no evidence of fault here.
19. Paragraph 3.12 of ‘Supplementary Planning Document 6 - Alternations and Extensions to Residential Properties’ contains guidance on the separation distances between dwellings. It states that, “the Council will seek to ensure that:
 - Extensions maintain a minimum distance of 13m between a principal window to a ground floor habitable room (e.g. living rooms and bedrooms) in one property and a two storey blank wall of a neighbouring property;
 - Extensions maintain a minimum distance of 6.5m between a principal window to a habitable room in one property and a single storey blank wall of a neighbouring property.”
20. The document describes a principle window as a, “window to a habitable room on a main aspect to that property. It would normally be the larger window where there is more than one window.”
21. The officer’s report on the proposal states that the windows serving Mr B’s kitchen/diner are not on the main aspect. And so these separation distances do not apply. Mr B considers the side elevation facing the extension is a main aspect

of his property because it is longer than the front or rear elevations and contains important windows. I am satisfied that there was no fault in the way the Council decided that Mr B's side elevation was not the main aspect, and so the separation distances did not apply. But it would be helpful if the supplementary planning document included the definition of the 'main aspect' of the property so that members of the public are more likely to understand the term. Particularly considering it says that the main aspect is the front or rear of the property, whereas government guidance says that there is only one 'principle elevation'.

22. The Council says that it does not publish officer reports online unless an application is reported to Planning Committee. But that all officer reports are accessible to the public upon request. It says that objections to planning applications are published online if they are received online. But that it does not publish objections which it receives by other methods. I have considered the Council's notification letter and it states that comments "may" be published. There was no requirement for the Council to publish Mr B's objection or the officer's report on the proposal. I have found no evidence of fault here. In any event, I do not consider these documents not being available online caused Mr B any significant injustice.

Recommended action

23. I consider the Council's failings in this case have put Mr B to avoidable time and trouble. To remedy this, I recommend that the Council makes a payment of £100 to Mr B.
24. I also recommend that the Council reminds its officers of the importance of clearly explaining how decisions have been reached in officer's reports on planning applications. The Council should also consider including the definition of 'main aspect' in its supplementary planning document.
25. The Council should take these actions within four weeks of my final decision.

Draft decision

26. Subject to further comments by Mr B and the Council, I intend to make a finding of fault which caused injustice. Should the Council agree to take the recommended actions, it will be sufficient to remedy that injustice.

Investigator's draft decision on behalf of the Ombudsman