

## **The Ombudsman's final decision**

Summary: Mr C complains about the Council's approval of a school building behind his home. We do not uphold this complaint, finding no fault in the Council's decision.

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## **The complaint**

1. I have called the complainant 'Mr C'. He complains about the Council's approval of a school building ('the development') located behind his home, which replaces an existing school building. Mr C complains about the:
  - Extent of consultation on the plans for the development.
  - Location of the development within the site (considering there were other preferable locations within the school grounds).
  - Consideration given to the impact of the development on his privacy and enjoyment of his home.
  - Procedures followed by the Council at a strategic planning committee which approved the development in principle.
2. Mr C says the development will have a negative impact on his enjoyment of his home. He says it will reduce his privacy, reduce daylight levels and cause a potential noise nuisance.

## **The Ombudsman's role and powers**

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. 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. Before issuing this decision statement I considered:
  - Mr C's written complaint to us and further information he provided in a telephone conversation.

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- Information available on the Council's website detailing the planning application and its consideration of the same.
  - Further information provided by the Council sent in reply to written enquiries.
  - Comments made by Mr C on a draft decision statement setting out my thinking about the complaint. The Council also saw the draft statement and said it had no comments.

## **What I found**

### **The complaint about consultation**

6. I considered each part of Mr C's complaint in turn. I found no grounds to uphold the first part of the complaint noting the Council formally notified Mr C of the relevant planning application by letter. It gave him opportunity to present objections in writing, which he went on to do. The Council later summarised those objections in an officer's report for its planning committee which decided the planning application. Mr C also had opportunity to address the committee in person. The Council therefore did everything we would reasonably expect it do, to ensure Mr C knew of the application and had chance to comment on it.
7. Despite this however, I do understand why Mr C has some grievance about consultation on the development more widely. Before the Council received a planning application the school next to Mr C's home had held a public consultation event. Yet neither Mr C nor his immediate neighbours, who are most closely affected by the development, received invites. So, they did not learn the detail of the proposed development until after the Council received the planning application. I understand the school or its agents undertook further consultation informally with Mr C after this date. And the consultation exercise resulted in some minor changes to the development. But Mr C considers that by the time of the second informal consultation event the school's plans, by now presented to the Council, were unlikely to change.
8. While all of this is unsatisfactory, the Council was not the applicant. The applicant was the Education Skills and Funding Agency (ESFA) acting for the school, which has independent foundation status. But any failing in the informal consultation carried out by the ESFA, school or their agents is something that falls outside the scope of this investigation. Because I can only investigate alleged fault by the Council.

### **The complaint about the development location**

9. Part of the planning application sought permission to demolish an existing school building on the development site. While there are some differences in the footprint and positioning of the development from the existing building, it is in about the same position. The school proposed using temporary classrooms on another part of the site while development took place.
10. Mr C questions why the development cannot take place on the site of the temporary classrooms where he considers it would be less intrusive. Or if not in that location, Mr C suggests there are other points around the school grounds as suitable. Sport England, which the Council consulted on the planning application, supported the view there were potential alternative locations. This suggests the school could have developed elsewhere without loss of playing fields, which was Sport England's concern. However, its comments also show that it did not express a clear preference for any alternative site or question the use of the chosen site.

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11. I can therefore understand Mr C's concerns here. But all landowners have the right to decide where on their land they want to build. The role of the Council is to decide if development in the preferred location is acceptable. Other locations may also be acceptable, but it is not the role of the Council to require that a landowner site their proposed development elsewhere on that basis. It can only decide the application the developer presents to it. Having a suitable alternative location is not a ground for the Council to refuse planning permission.
  12. Despite this being the legal position, I can see the Council planning committee did not wish to approve this development without receiving satisfactory assurances the school had considered alternatives. It deferred a decision on the planning application to allow a site visit and to ask officers to gather more information about the potential alternative locations. Officers did this and received comments also from the school's agent, which explained why it considered other locations on the site unsuitable.
  13. Mr C may disagree with the agent's analysis and members of the planning committee might also. But, as I have noted, that disagreement would not give grounds for the Council to refuse permission. So, I find no fault in the Council approving the development even if alternative locations within the site existed.
  14. I also note that in his comments on the application Mr C suggested the development would have a lesser impact on him if built down to a lower level on the site. I note the developer commented to the committee on why they did not consider that feasible (or else implied it would only be feasible at higher cost). I do not consider the committee had to consider this suggestion. This is for the same reason as it could not insist the school re-site development elsewhere on the school grounds. The Council had to decide whether to approve development on the plans in front of it. There could be no fault in the Council not requiring the development at lower level, if it found the plans presented to it acceptable.

### **The complaint about the development's impact**

15. This leads me to consider next Mr C's concerns about the impact of the development. He considers it is too close to his property, noting that while the development is in about the same position as the existing building its facing wall will be two metres closer to the boundary. He considers the development will therefore appear overbearing. It will also reduce sunlight entering his garden. Mr C has further concerns for his privacy, noting windows in the first-floor of the development, which serve classrooms, could have views into his garden and to the rear of his house. While there is extensive planting around Mr C's home providing screening, some of this is dying off with age and Mr C will replace it over the next few years. So, he anticipates losing some of this screening. He thinks the developer wrongly relied on this screening in their plans. Mr C also has a further concern about potential nuisance from noise, with equipment housed on the roof of the development.
16. I find Mr C drew his concerns to the attention of the Council in his objections. I am satisfied the Council then went on to consider those concerns before approving the development. The planning officer's reports to committee highlighted matters relevant to Mr C's concerns about the development's impact. I summarise these as follows:
  - While the development is closer to Mr C's home, it is also lower than the existing building on the site. The existing building has three floors where located closest to Mr C's boundary. The new building will have only two floors.

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- The development still maintains a separation distance of nearly 22 metres which the Council's local planning policy considers acceptable for development of this height.
  - The existing building has windows at second and third floor level which face towards Mr C's garden.
  - The developer commissioned a study on neighbouring houses to see if they would lose sunlight from the development. The study found any losses would be minimal and well within national guidelines for an 'acceptable' loss of daylight.
17. Taking account of these points, officers recommended to members of the planning committee they should approve the development. They argued the development would not have any greater adverse impact on Mr C's amenity, or enjoyment of his home, than the existing building. They said they could control any negative impact of noise from plant or machinery through use of a planning condition. This would require the developer present details of noise impacts before installation.
  18. I consider the supporting drawings and plans with the development did not reveal any inaccuracies in the officer's advice. I note Mr C had a concern about how the Council measured the separation distance. But I find it considered this correctly, based on the site plans.
  19. I recognise Mr C disagrees with the officer's advice to committee and with members agreeing that advice. But as I explained in paragraph 3, I cannot uphold a complaint because of disagreement alone. There must be some fault in how the Council took its decision. In this case I cannot see there was any fault. I find nothing irrelevant in the list of matters considered by planning officers summarised in paragraphs 16 and 17 above. I found no errors in how they considered these points. Nor do I consider officers overlooked anything relevant in their report or took account of anything irrelevant. I note the planning committee clearly took its time and only approved development after carrying out a site visit, showing it took its role conscientiously.
  20. I noted there was no sunlight analysis undertaken on Mr C's home. But I considered that reasonable given the development closest to his home will be lower than the existing building. It will be closer, but I cannot see the difference will have any noticeable effect on daylight levels. This is especially after considering the analysis of sunlight impacts on neighbouring properties, which will experience a greater impact from the new building when compared to the old.
  21. I recognise the concerns Mr C has about the declining screening effect of the planting in his garden. But there is nothing in the record to suggest officers or members placed any weight on the existing screening in deciding the planning application. I am satisfied given how it considered the impact of development on neighbours the Council would have approved it even if there was no screening in Mr C's garden beyond a standard boundary fence. Further, that it could reasonably do so for the reasons I have given above.
  22. I also note that where the development faces Mr C's property there is no screening or obscure glazing proposed for windows at first floor level. But elsewhere on the same floor the developer agreed to adjust window designs to allow some screening. I noted that after Mr C complained about the Council's approval of development it said that it would speak to the agent about extending this screening.

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23. Mr C considered it was discriminatory for the Council not to insist on obscure glazing in the new building where closest to his home, having asked for this to protect privacy for neighbours. But I do not agree with this. This is because there are differences in the relationship between his neighbours' homes and the development and that of his own. First, I consider the plans show that the house to the immediate north of Mr C's is closer to the development site. Second, I note that house and others to the north face directly the new development whereas Mr C's house is at an offset angle. Third, I note the old school building was only single storey when it previously faced the houses to the north but three storeys closest to Mr C's boundary. These are all factors which reasonably justify a difference in approach to window design on different parts of the new building.
24. In reply to my enquiries the Council has confirmed the school's agent will not agree to further change the window designs. Their reasons for this are the design must allow for some natural light in the building and that school design rules require pupils to have views out of the site.
25. I note with disappointment the Council did not tell Mr C of this reply. But I cannot see the Council could or should do more. I have found it could reasonably approve the development without changes to the windows closest to Mr C's home. Because these windows would have no different impact to the ones in the existing building. So, it could only ever ask for further changes as a goodwill gesture.

### **The complaint about procedure**

26. Mr C raised two concerns here. First that residents could not attend or address the site visit. I considered that normal practice and not something we would fault. Site visits are for members to understand a development. They can ask factual questions; for example, to clarify a building's position. But they are not a forum where either applicant or objector can make their case for or against development. The place for that debate is the committee and the evidence shows that both times the Council's planning committee considered this application, it allowed speakers.
27. Mr C's second concern was that his Ward Councillor was interrupted and could not finish a presentation to the second committee. The Councillor spoke on behalf of Mr C as he could not attend. I understand this would cause Mr C frustration. But in considering all the evidence in this case I cannot conclude any interruption here was likely to have made any difference to the outcome of the application. I have also explained why I am satisfied the Council did all we could reasonably expect to invite and consider Mr C's objections.

### **Final decision**

28. For the reasons set out above I cannot uphold this complaint, finding no fault by the Council in its decision to approve the development close to Mr C's home. I have therefore completed my investigation satisfied with its actions.

### **Investigator's decision on behalf of the Ombudsman**