

31 July 2023

Complaint reference:
22 015 444

Complaint against:
South Staffordshire District Council

The Ombudsman's final decision

Summary: Mr B says the Council wrongly accepted a planning application without an accurate title, failed to notify him of changes to the application and failed to consider how two applications would impact on his amenity. There is no fault in the Council accepting the first application or in how it considered how the development would impact on Mr B. The Council was at fault for not consulting Mr B on amended plans. The remedy the Council has already put in place is satisfactory.

The complaint

1. The complainant, whom I shall refer to as Mr B, complained the Council:
 - accepted a planning application when it did not have an accurate title;
 - wrongly failed to tell him about changes to the application;
 - failed to consider the impact the development would have on him when granting two planning permissions.
2. Mr B says fault by the Council has resulted in him losing privacy and prevented him objecting to the application.

The Ombudsman's role and powers

3. 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*)
4. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)
5. If we are satisfied with an organisation'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

6. As part of the investigation, I have:

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- considered the complaint and Mr B's comments;
 - made enquiries of the Council and considered the comments and documents the Council provided.
7. Mr B and the organisation had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

What should have happened

8. Before publicising and consulting on an application, the local planning authority should be satisfied the description of development provided by the applicant is accurate. The local planning authority should not amend the description of development without first discussing any revised wording with the applicant or their agent. Checking the accuracy of the description of development should not delay validation of an application.
9. Government guidance is clear an application can be amended after it has been submitted. Where an application has been amended it is up to the local planning authority to decide whether further publicity and consultation is necessary in the interests of fairness. In deciding what further steps may be required local planning authorities should consider whether, without re-consultation, any of those who were entitled to be consulted on the application would be deprived of the opportunity to make any representations that they may have wanted to make on the application as amended.

What happened

10. The Council received a planning application for a development involving various extensions on a site which is adjacent to Mr B's property. The Council consulted neighbours, including Mr B, on the application. At that point the extension closest to Mr B's property was single storey. Mr B says he viewed the plans on the Council's website and did not have any concerns as the single storey extension would not be visible above the fence line. He therefore did not object to the application.
11. One month after receiving the original application the Council received amended plans. Those amended plans changed the part of the extension closest to Mr B's property from single storey to two storey. The Council did not consult on those amendments and granted planning permission.
12. When the applicant began building the development Mr B raised concerns with the Council as it did not appear the development was the same as the one he had been consulted on. An enforcement officer visited the site and identified additional changes from the approved plans. The enforcement officer asked the applicant to put in a retrospective planning application. When the Council received the retrospective planning application it consulted neighbours, including Mr B. Mr B put in objections, particularly about the impact of overlooking from the window at first floor level. The Council granted planning permission for the development.
13. When responding to Mr B's complaint the Council accepted in this case it should have reconsulted neighbours on the amended plans. The Council did not consider this affected the decision. The Council apologised and, following a planning service review, agreed to routinely reconsult neighbours on amended plans. The Council has introduced a new procedure for that.

Analysis

14. Mr B says the Council accepted a planning application from his neighbour when the description of the development was not accurate and did not change when the proposed development changed. As I say in paragraph 8, Government guidance is clear the Council should be satisfied the applicant's description of the development is accurate. In this case the description of the development for the first planning application was 'the erection of various extensions.' I understand Mr B's concern given the original plans for the application proposed a single storey extension to the rear, next to his garden and this was later amended to a two storey extension and the description of the development did not change. However, as the description of the development did not say anything about whether the extensions were single or two storey I do not consider the description is affected by the amended plans. It is usual to see a description of a development which includes more information about the proposal. However, I do not consider it warrants a finding of fault in this case given what was originally proposed was various extensions and that did not change. In those circumstances I see no reason why the Council would have sought a different description of the development.
15. In reaching that view I note Mr B questions whether the Planning Committee that granted planning permission could understand what was being proposed given the vague description for the development. I am satisfied though as well as the description of the development officers also presented the Committee with plans for the development at the Committee meeting. I am satisfied that would have allowed Members to understand the types of extensions proposed. I therefore have no grounds to criticise the Council.
16. The Council accepts when it received amended plans for the development it should have reconsulted neighbours previously notified. I agree the Council should have reconsulted in this case because the amended plans did not show only minor amendments as it changed the type of extension closest to Mr B's property from single storey to two storey. Failure to consult neighbours on the amended plans is fault.
17. I appreciate the Council says the amended plans were available for residents to view on the Council's website. However, given Mr B objected to the later application and did not object to the original single storey proposal I consider it likely he had checked the plans on the website before the amended plans were received. I see no reason for Mr B to check the website again given he had no concern about the impact of the original plans and the Council had not told him the plans had changed. Failing to consult Mr B on the plans therefore denied him the opportunity to object to the application. I consider it likely he would have objected given he raised concerns about the development once his neighbour began building and as he objected to the later retrospective application.
18. Mr B says in granting the two planning permissions the Council failed to consider how the development would impact on his amenity. Mr B says as a result there is now a two-storey extension overshadowing the bottom of his garden and creating overlooking of his property.
19. For the first application I note the report records the officer's view there would not be any impact on Mr B's property. However, there is no explanation in the report about why the officer took that view. I would normally expect the planning report to record the reasons for the officer taking that view, referring to things like the distance between the two properties, whether the properties face each other and

whether there is any direct window to window overlooking. Having considered the plans showing the relationship between the development and Mr B's property though I consider it likely the Council would not have considered the impact on Mr B so significant as to warrant refusal of the application or any amendments to it. I say that because I note the two properties do not directly face each other and the two-storey extension runs sideways along the bottom of Mr B's boundary. In those circumstances although there may be overshadowing of the bottom part of Mr B's garden I do not consider it likely, on the balance of probability, the officer would have considered that unacceptable in planning terms.

20. Given the relationship between the two properties I also consider it unlikely the Council would have considered the window to cause unacceptable overlooking of Mr B's property given the window does not face his property but instead faces down the length of the neighbour's garden. So, while I consider the Council should have included more detail about its reasoning in the report I do not consider it likely this affected the decision to approve the application. For the same reason I do not consider it likely, on the balance of probability, if Mr B had objected to the application it would have affected the decision.
21. For the second application, which is the one Mr B objected to, I am satisfied there is more explanation in the report about why the officer considered the development acceptable in terms of its impact on Mr B's amenity. I note the report set out Mr B's objection, which was mainly around overlooking from the first floor window. I am also satisfied the report set out the officer's view as to why she did not consider the impact the development would have on Mr B's property unacceptable. In particular, I note the report refers to the height of the window and the fact it does not directly overlook the flank sidewall of any neighbouring properties. I appreciate this is a view with which Mr B may disagree. However, as I said in paragraph 4, it is not my role to comment on the merits of a decision reached without fault. In this case the report for the application clearly set out why the officer considered the impact on Mr B's amenity acceptable in planning terms. As that view was also reached after visiting the site where the officer could view the development as built, there are no grounds on which I could criticise it.
22. I welcome that the Council has now introduced a procedure to ensure neighbours are consulted when amended plans are received. However, I consider the Council's failure to reconsult Mr B denied him the opportunity of objecting to the first application. As I do not consider it likely if Mr B had objected it would have changed the outcome I consider the apology the Council has already offered Mr B, alongside the change in procedure, satisfactory remedy.

Final decision

23. I have completed my investigation and found fault by the Council which caused Mr B an injustice. I am satisfied the action the Council has already taken has remedied Mr B's injustice.

Investigator's decision on behalf of the Ombudsman