

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

Summary: Mr and Mrs X complain the Council did not notify them of a planning application, did not consider the effect on their residential amenity and did not carry over objections from an earlier application. The Council accepts it did not carry out any advertising for this application which is fault. Changes have been made to the development including the inclusion of a privacy screen which greatly reduces the impact on Mr and Mrs X.

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## **The complaint**

1. Mr and Mrs X complain the Council failed to notify them of a planning application at a neighbouring property and failed to consider the effect on their residential amenity. Mr and Mrs X also complain the Council failed to carry over their objections from an earlier planning application which are applicable in this case.
2. Mr and Mrs X say their privacy will be affected as a result of this development.

## **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. 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. As part of the investigation, I have:
  - considered the complaint and the documents provided by the complainant;
  - discussed the issues with the complainants;
  - sent my draft decision to both the Council and the complainant and taken account of their comments in reaching my final decision.

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## What I found

6. Mr and Mrs X's neighbour made a planning application in November 2017 for a single storey rear extension. The Council notified Mr and Mrs X of the application and they made comments. Mr and Mrs X say as this proposal was mainly for a ground floor extension they did not have objections. However, they would object if any first floor development was permitted in the future as this would result in overlooking and loss of privacy.
7. Mr and Mrs X's neighbour submitted another application in February 2018. This proposal included a larger room with dormer on the first floor with double glass doors opening onto a large first floor balcony. The Council approved this application on 8 May 2018.
8. In 2019 the neighbours began work on the development and Mr and Mrs X contacted the Council. The Council acknowledged it had not notified any neighbours on the new application in February 2018. It also stated it had not placed a site notice.
9. In response to Mr and Mrs X's complaint, the Council said while there was an error in its consultation process this did not necessarily mean its decision on the application was flawed. The Council says the case officer did consider the impact on their property and noted there would be some overlooking into their garden. The Council said when it considers the impact of extensions, it is seeking to protect the privacy for neighbours from overlooking directly into habitable rooms and does not seek to protect the overlooking of gardens. It acknowledged there had not been an issue of first floor windows overlooking gardens previously as both properties are bungalows. It said that overlooking from first floor windows into a neighbouring garden is commonplace in most housing situations.
10. In July 2019, the neighbours submitted an application for a non-material amendment of the previous application. Although there is no requirement to notify neighbours of this type of application, the Council wrote to Mr and Mrs X and invited their comments. The amendments included the installation of a privacy screen to the balcony. This application was approved on 3 October 2019, after Mr and Mrs X submitted their complaint to the Ombudsman.

## Analysis

11. The Council has accepted there is fault in this case. It failed to carry out any advertising of the application submitted in February 2018. As a result Mr and Mrs X had no opportunity to make their objections known in respect of the first floor dormer room and balcony.
12. When determining the planning application, the Council did consider the impact on the neighbouring property. It acknowledged there would be some overlooking from the balcony but felt this was acceptable as it was set down within the roofs of the extensions. It also considered the separation distances are sufficient to ensure privacy would not be affected to a degree that would result in a reason for refusal. Mr and Mrs X do not agree with this assessment and consider the degree of overlooking, particularly from the balcony would greatly impact their privacy.
13. When there is fault leading to a decision, the Ombudsman can comment on the merits of the decision made. This would usually result in him taking a view on whether something had been built that otherwise would not have been. However, in this case and since Mr and Mrs X submitted their complaint to the Ombudsman, changes have been made. The neighbours submitted an

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application for a non-material amendment which has resulted in the inclusion of a two metre obscure glazed privacy screen along the side elevation.

14. Mr and Mrs X accept that this does largely protect their privacy. A two metre high screen does give complete privacy along the side elevation. While I note their comments that there could be an element of overlooking from the end of the balcony across their garden, this will be limited.
15. Having considered all the facts in this case, while there is fault I am not persuaded that something has been built that otherwise would not have been. I consider the approval of the non-material amendment application means the impact on Mr and Mrs X has been reduced and so there is no need to make any further recommendations.
16. Mr and Mrs X also complained the Council did not carry forward their comments in respect of the application in November 2017. I do not consider this to be fault. A council has to consider each application on its merits. It cannot assume that because someone objected before they will make the same comments on any subsequent applications. The fault in this case was the failure to properly advertise the February 2018 application and not the failure to carry over comments.

### **Final decision**

17. I will now complete my investigation as there is no significant outstanding injustice to Mr and Mrs X as a result of the fault in this case.

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