

Complaint reference:
12 011 248

Complaint against :
Wyre Forest District Council

The Ombudsman's final decision:

I am not to initiating an investigation into the complaint. This is because I do not consider there has been any administrative fault by the Council in dealing with a planning application at neighbouring property causing a significant injustice to Ms D.

The complaint

1. Ms D complains the Council failed to tell her when the owner of a neighbouring property applied for planning permission to build a garage and shed. Ms D says she lives opposite to the property but owns the land near to the site
2. Ms D says the shed has been made of brick rather than wood as approved. The shed is on the boundary of the site and the owner has built a brick wall along the boundary. Ms D says the wall is an eyesore and affects her amenity. Ms D says the Council has refused to take enforcement action to remove it.

The Ombudsman's role and powers

3. The Ombudsman considers complaints of maladministration about the administrative functions of a Council.
4. The Ombudsman has the power to decide whether to start, continue or discontinue an investigation into any complaint.

(Local Government Act 1974, section 24A (6))

How I considered this complaint

5. I have:
 - considered the complaint and the documents provided by the complainant;
 - considered documents the Council provided;
 - discussed the issues with the complainant.

What I found

What happened?

6. Ms D lives in a cul de sac. In 2007 the Council gave planning permission for a house opposite to Ms D's property to be demolished and two bungalows with garages to be built. The Council considered a planning application for an extension to the garage and shed at one of the new bungalows on 26 July 2011.
7. The planning officer's report says the application was to extend the existing single garage to a double and enlarge a small shed behind the garage. The officer

considered garages were a feature of other nearby properties and the enlarged garage would relate well to the character of the area. There was a store on the site of the proposed garage. The officer said a brick building would harmonise better with the existing street scene and complement the bordering bungalow. It was not considered the garage would adversely impact on the bungalow or affect light. It would be made of materials to match the existing garage.

8. The garage extension was considered to be of an acceptable scale, design and appearance on the street scene. The report said the impact of the garage extension on neighbouring properties and the surrounding area had been carefully assessed. It was considered there would be no undue impact on amenity. The proposal was considered to comply with Council planning policies and planning permission was granted.
9. Ms D contacted the Council on 12 January 2012 saying the owners of the bungalow opposite were planning to build a brick wall along the boundary of the properties. Ms D said as the owner of a neighbouring property with a shared boundary to the bungalow she should have been informed of the planning application. The Council replied on 26 January 2012. It said Council policy was where possible to tell neighbours with a shared boundary when it received a planning application. The Council said sometimes shared land ownership was not always clear as in this case.
10. The Council said it identified neighbouring properties using an up to date Ordnance Survey map. There was no obvious suggestion the land Ms D was referring to was in her ownership as it was across the road, opposite her property. It was between the back of the pavement and the rear boundary fence to the bungalow. The Council said it did not keep or have access to ownership details of every piece of land in the district. Based on the map there was no obvious reason to consider the strip of land was owned by properties on the opposite side of the road.
11. The Council said it carried out neighbour notification and the case officer did a site visit. There was nothing to link the ownership of the land with Ms D's property. The Council said the direct neighbour notification carried out for the planning application was correct and under the Council's policy. The Council could not confirm whether the owners of the bungalow were replacing the existing fence with a wall. The Council said planning legislation did allow changes in boundary fencing without needing planning permission. If any proposals were made needing planning permission the Council would tell Ms D now it was aware she owned the strip of land.
12. Ms D asked the Council for a copy of the map used, photographs of the site taken by the planning officer and the Council's policy allowing the development. The Council sent a copy of the map and photograph. It said based on the map and appearance of the land there was no obvious sign the land was owned by the properties opposite. The Council provided a copy of its relevant planning policy.
13. Ms D wrote on 29 April 2012. Ms D said there were fencing, planting and bark chippings on the land. The Council should have been aware this was done by the householder opposite. Ms D considered the Council's photograph to be poor quality and was dated after the planning application was approved. Ms D asked the Council to confirm its policies had been taken into account. These were in relation to a proposal harmonising with the existing landscape, not creating incongruous features and not having an adverse effect on the amenity of

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- neighbouring residents. Ms D said the shed was due to be built of wood but was being built with brick wall with a wooden panel at the back.
14. The Council responded on 23 May 2012. It said based on the planning officer's visit, photographs and map data there was nothing to suggest the land was in Ms D's ownership. The Council said the case officer's photograph was of poor quality so an image from a web site was used to help show the area. Once the decision was made on the application the file was returned to the case officer. It had been noted no photograph had been printed off. Due to the poor quality of the case officer's photograph the web site image was printed off as a file copy. This was the image sent to Ms D.
 15. The Council said the application had been assessed under relevant planning policies. The proposal was considered to be suitable in the location, have no adverse impact on the amenity of neighbouring properties and was not an out of place feature. The Council said the shed was to be wooden and was unaware it was being built of brick. It said it was likely to have approved a brick built shed as it extended off a brick garage. However enforcement officers would visit the site to inspect what was being built.
 16. Ms D wrote on 23 July 2012 about the Council's neighbour notification policy. The Council's policy was to consult neighbours with a shared boundary with the application site. Ms D said she should have been consulted as a result. The planning application and development had led to an eyesore along the road especially in front of her house. Ms D said she had lost the privacy at the front of the house and would have objected to the proposal on the following grounds;
 - The roof of the garage and shed was unsightly and can be seen from Ms D's property;
 - There was not enough space to build the shed and has resulted in trespass onto another property;
 - Land has been allowed to be built up at the back of the garage so the shed can be built at the same level. As a result the wall has been built at over two metres high on Ms D's side creating an eyesore. Ms D would have asked the Council to consider the impact onto Ms D's road.
 - The shed was to be built of wood. If the permission was carried out properly the owners would not have removed the hedge providing security and privacy to residents on Ms D's road. As the shed is of brick one wall now forms the boundary between the bungalow and Ms D's road.
 17. Ms D considered the Council should take enforcement action due to the negative impact of the development onto the amenity of Ms D's road.
 18. The Council wrote on 8 August 2012. It apologised Ms D had not been notified of the planning application. The Council's policy was to notify those with boundaries adjoining the application site. Officers would normally look for properties with a direct curtilage adjoining the application site. The Council said the road separates the boundary of the application site from the frontage of Ms D's property. The planning officers would be unaware Ms D owned the strip of land between the application site and the road. Officers would look at the curtilage of Ms D's house which is formed by the front of her house up to the road and the bordering properties.

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19. The Council considered Ms D's objections to the proposal. It said the front of Ms D's house was 20 m away from the garage and there was a public highway between. The garage has no windows facing Ms D's property. Because of this the Council did not consider there was any loss of privacy to the front of Ms D's house. The Council said there was already a single garage on the site. The Council considered the extension to be small and with the 20 m between them it did not create an eyesore. The Council said if it had received objections from Ms D when dealing with the application it would not have made a different decision. This was due to the garage being single storey only and the distance of 20 m to Ms D's property.
 20. The Council said the materials differed from the plans The Council said it can serve an enforcement notice where there is a breach of planning control. Before it does so it offers the opportunity to regularise the situation. The owner would therefore be required to put in a planning application to build the shed in brick. As the Council considered there was no impact on Ms D's privacy and it was not an eyesore, a new application would not result in a different result. The Council said it could take enforcement action if it was considered to be expedient to do so in the public interest. The Council considered such action was not necessary in this case.
 21. Ms D wrote on 20 August 2012 complaining she had not been consulted on the planning application even though she shared a boundary with the bungalow. Ms D complained no enforcement action had been taken when she had reported the shed being built of brick. Ms D said the owners of the bungalow had removed a hedge which resulted in a loss of privacy at her house.
 22. The Council responded on 11 September 2012 to Ms D's concerns. It explained again it did not hold information on land ownership for every piece of land in the district. From visiting the site it was a reasonable to assume the land was owned by the bungalow or highway authority. The Council apologised for not sending a notice to Ms D. The Council explained its view on enforcement and why it was not appropriate in this case. Ms D's concerns about privacy due to the removal of the hedge were noted. The planning officer's report had not mentioned any issues about the hedge therefore there was nothing to prevent pruning or removal of the hedge. Planning permission was not required so Ms D's privacy was never guaranteed.

Analysis

23. The Council has explained it does not have access to ownership details for every piece of land in the area. Planning officers visited the site to assess the proposal and there were no obvious signs to show the land was in Ms D's ownership. Officers look for properties with direct curtilages adjoining the application site. Ms D's land was opposite her property, 20 m away and separated by a highway. The Council says it is unusual for a property to own land opposite it which is separated by a highway. The Council has apologised it did not tell Ms D of the planning application. It is unfortunate the Council was unaware Ms D owned the land and did not notify her. However I do not consider the action taken by the Council to identify land ownership to be unreasonable. This is because officers used up to date Ordnance Survey maps and visited the site. Because of this I cannot say there has been administrative fault by the Council.
24. I understand Ms D feels strongly the garage and shed impacts on to her amenity. The officer's report on the planning application clearly outlines the proposal. Officers considered developing the garage and shed was acceptable and did not

harm local amenity. I recognise Ms D disagrees with the Council's decision to grant planning approval for the development. However there is nothing in the documents I have seen to suggest the Council was not aware of all the relevant facts when it reached its decision. There are therefore no grounds to question the merits of that decision.

25. Ms D has provided the objections she would have made had she been notified. These include the proposal being unsightly, the impact on to her amenity and that of the road she lives on. These concerns were taken into account in the officer's report. The Council's decision to approve was therefore unlikely to have been any different even if Ms D had been notified and objected. For this reasons I do not consider Ms D has suffered any injustice from the events she complains about.
26. Officers have responded to Ms D's concerns about a wall being built and explained this can be done without the owner applying for planning permission. It was also open to the owner to remove the hedge at anytime as there was no planning reason to keep it.
27. The Council has responded to Ms D's concerns about the shed being built of brick. Officers have visited the site and reached a decision not to take enforcement action as it is not considered expedient to do so. The Council says this is because it would have granted planning permission for a brick built shed had the owner submitted such a proposal.
28. I understand Ms D feel strongly the Council should take enforcement action to prevent the shed being built of brick so there is no need for the wall. The decision not to take enforcement action was one reached by the Council's professional officers. It is not for the Ombudsman to substitute her judgement for that of the professional judgement of officers on whether enforcement action should be taken. She can only question the way that judgement was reached if she has evidence it was reached through maladministration. In this case officers came to their view after considering Ms D's concerns and visiting the site. Because of this I cannot conclude there was maladministration in the way the judgement was reached and so there are no grounds to consider this part of the complaint any further.

Decision

29. My decision is not to initiate an investigation into the complaint. This is because I do not consider there is evidence of administrative fault by the Council causing Ms D a significant personal injustice.

Investigator's final decision on behalf of the Ombudsman.