

9 August 2019

Mr Derek Ritson
Monks Orchard Residents Association



Our ref: 19 003 809

(Please quote our reference when contacting us and, if using email, please put the number in the email subject line)

If telephoning please contact: 
email address: N.Potts@coinweb.lgo.org.uk

Dear Mr Ritson

Complaint against London Borough of Croydon

I apologise for the delay in writing. I was away from the office unexpectedly for the last two weeks. I have now carefully considered your comments on my draft decision statement. However, as you will see from the attached final decision statement, I have decided we will not consider it further.

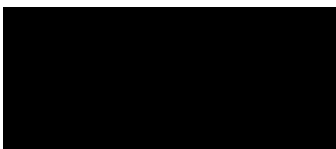
I recognise this may disappoint you but thank you for bringing your concerns to our attention. By law, we must tell the Council of our decision, so I have sent it a copy.

Publishing our decision

We publish our final decision statements on our website. We use false names and do not reveal details that could identify people involved. If you are concerned that publishing our decision will identify you, please let me know as soon as possible.

We normally delete your complaint documents 12 months after the date of our decision. We will keep the final decision statement and cover letters for five years, after which we will delete them.

Yours sincerely



Neill Potts
Investigator

Enc: Final decision statement

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr X's complaint about the Council's decisions not to apply unadopted planning guidance to an application for a residential back development. There is not enough evidence of Council fault, or injustice caused to Mr X or the residents he represents, to justify an Ombudsman investigation.

The complaint

1. Mr X represents a residents' association. He complains on the association's behalf, and on behalf of 51 concerned residents.
2. Mr X's complaint is about the Council's consideration of and decision on a planning permission for a residential back development. He complains:
 - a) the Council failed to take proper account of an emerging policy on the appropriate widths of access roads when dealing with the application;
 - b) the Council's officer inappropriately stopped the planning committee Members considering the application under the emerging policy.
3. Mr X considers the Council's actions have led to the local community losing confidence in the planning process, causing dissent when local support is needed for future housing provision.

The Ombudsman's role and powers

4. 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*)
5. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe the injustice is not significant enough to justify our involvement. (*Local Government Act 1974, section 24A(6), as amended*)

How I considered this complaint

6. As part of my assessment I have:
 - considered the complaint and the documents provided by Mr X;
 - considered relevant online planning documents and maps;

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- issued a draft decision, inviting Mr X to reply, and considered his response.

What I found

7. The Council was in the process of considering adoption of a 'Suburban Design Guide' ('the guidance') to inform its planning decisions. Part of the guidance is about the width of access roads. The guidance mentions a suitable width to be 3.7 metres.
8. The back residential development planning process ended a few days before the Council considered then adopted the guidance. The Council records the entrance road for the development as 3.5 metres wide. Mr X says it is 3.1 metres.
9. The Council had not adopted the guidance at the time that it fell to the committee to decide the application. There does not appear to be fault by the Council in not applying the unadopted guidance.
10. Mr X considers the Council should have treated the guidance as a relevant emerging policy, in line with the National Planning Policy Framework (NPPF) and given it more weight in its decision-making process. The NPPF states councils acting as local planning authorities 'may give weight to relevant policies in emerging plans'. The NPPF gives councils the discretion on what weight to give such policies. It was for the Council to use its discretion and professional judgement to decide on what weight to give the guidance. It is not fault by a council to make a decision with which someone disagrees. There is not enough evidence of fault by the Council to warrant an Ombudsman investigation.
11. In any event, even if the Council should have applied the unadopted guidance during the development's planning process, that does not mean the committee Member's decision on the application would have been different. The Suburban Design Guide is guidance, so the Council is not bound by it. Officers and Members can diverge from it where they consider the circumstances of a planning matter justify it.
12. Mr X is concerned the Council's officer stopped discussion on the guidance in connection with the development at the planning committee meeting. But this was in line with the professional judgement decision officers made on the weight they should give to the unadopted guidance. I do not consider the officer's actions at the meeting provide enough evidence of fault to justify further Ombudsman involvement.
13. For the Ombudsman to investigate, he must be satisfied the matters complained of cause significant personal injustice to the person or people complaining. I do not consider the Council's decision not to apply the unadopted guidance here causes Mr X or the residents he represents a significant personal injustice. I also do not consider the width of the development site's entrance causes them significant injustice warranting an Ombudsman investigation.
14. Mr X says the access road width will cause safety, security and practical problems for future occupants of the planned development. The Ombudsman cannot consider claimed future injustices, and Mr X and the residents' association do not have standing to complain on behalf of unknown future residents. If any prospective buyers of these private residential homes share Mr X's concerns about problems caused by the access road, they may decide not to buy one.
15. Mr X is also concerned the access road will cause increased risks to emergency service staff, particularly those attending a fire. It is for the fire service to reach its

professional judgement on new developments, and what measures are required to appropriately ensure the safety of future residents and its staff. Mr X and the residents' association do not have standing to complain on behalf of the fire service.

Final decision

16. The Ombudsman will not investigate this complaint. This is because:
- there is not enough evidence of fault in the Council's consideration of the proposed development's planning permission to warrant investigation;
 - the matter does not cause Mr X or members of the residents' association he represents sufficient personal injustice to justify further Ombudsman involvement.

Investigator's decision on behalf of the Ombudsman