

Local Government &
Social Care
OMBUDSMAN

6 January 2021

Mr Derek C Ritson
Monks Orchard Residents Association

Your ref:

Our ref: 20 003 522

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

If telephoning please contact: 0330 403 4061

email address: C.Knowles@coinweb.lgo.org.uk

Dear Mr Ritson

Complaint on behalf of [REDACTED] against London Borough of Croydon

Thank you for your comments about my draft decision statement. I will respond here to the main points made.

[REDACTED] own response to the draft decision is contained in an email to you, after you had provided him with your own comments on it. [REDACTED]

There are no specific comments from [REDACTED] on the draft for me to address here. I turn therefore to the supplementary response you have provided from the Residents Association. The principal issue I need to address from that response concerns your statement that I have totally disregarded the complaint made by the Residents Association to the Council and subsequently to the Ombudsman. You consider it is wrong that I have focussed on the injustices of the residents who have given consent for you to act as their representative, because this does not address the Residents Association's complaints of maladministration by the Council in dealing with this planning application. You refer to the Council's Planning Constitution stating "Complaints about maladministration and injustice can also be made to the Local Government Ombudsman", and ask if such complaints are not pursued by the LGO, who does pursue them?

The process for deciding whether we will investigate a complaint has two stages. First we decide whether the law allows us to investigate (ie, are there any jurisdictional restrictions which apply?).

PO Box 4771 www.lgo.org.uk
Coventry
CV4 0EH

In the second stage we apply a number of tests, and the most important of these is assessing the level of injustice. We will not normally investigate a complaint unless there is good reason to believe that the complainant has suffered significant personal injustice as a direct result of the actions or inactions of the organisation involved. Complaints made on behalf of members of the public may be made by a wide range of people or organisations, but only with their consent. [REDACTED] provided consent for you to act as [REDACTED] representative in bringing [REDACTED] complaint, and [REDACTED] complaint was accepted on that basis. The focus of my investigation has been, entirely appropriately, on the claimed personal injustice caused to [REDACTED] by the Council's actions in this matter, in line with the Ombudsman's jurisdiction and our guidance on the investigation of complaints. Where a wider community campaign is concerned, an appropriate route to pursue this might be via local councillors.

You go on in your submission to refer to flood risk. As stated in the draft decision I took into account the officer's report to committee and I viewed the webcast of the committee meeting, and it is clear that flood risk was taken into consideration by the case officer and by the Members who ultimately were satisfied they had enough information to reach a decision on the application.

I have carefully considered all you have said but I am not persuaded there are grounds for me to reach a different view of the complaint. I therefore have made only minor amendments to statement of reasons, which I now enclose as my final decision. As required by law, I have also sent a copy to the Council.

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



Mrs C Knowles
Investigator

Enc: Final decision statement

The Ombudsman's final decision

Summary: A representative complains on behalf of [REDACTED] about the actions of the Council in granting planning permission for development near to [REDACTED] home. [REDACTED] disagrees with the Council's decision, as [REDACTED] considers the development will unacceptably impact [REDACTED] amenity. We find no fault in the actions of the Council in its consideration of [REDACTED] amenity when dealing with this application.

The complaint

1. A representative complains on behalf of a member of the local Resident's Association, whom I shall call [REDACTED], about the actions of the Council in granting planning permission for development near to [REDACTED] home, which [REDACTED] considers will adversely impact [REDACTED] amenity.

The Ombudsman's role and powers

2. 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*)
3. 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

4. I considered all the information submitted by [REDACTED]'s representative about [REDACTED] complaint.
5. I also considered information available on the Council's website about the planning application for development [REDACTED], including the officer's report to committee and the webcast of the committee meeting at which the application was determined.
6. [REDACTED] and the Council had an opportunity to comment on my draft decision. I considered their comments before making this final decision.

What I found

The planning application

7. The Council received a planning application for development [REDACTED]. The proposed development was for demolition of a pair of semi-detached homes and the building of eight new houses with associated access.

[REDACTED] concerns about impact on [REDACTED] amenity

8. When [REDACTED] became aware of the application and [REDACTED] lodged [REDACTED] objections with the Council. Many [REDACTED] points of objection referred to the proposed development itself rather than impact on [REDACTED] amenity. For example, [REDACTED] referred to the internal dimensions of the proposed properties, concerns about parking facilities and bin storage for the dwellings and about the design which [REDACTED] considered to be not sympathetic to or in-keeping with the area.
9. In terms of concerns about the impact of development on [REDACTED] amenity, [REDACTED] referred to overlooking and impact on [REDACTED] privacy. [REDACTED] also expressed concerns about flood risk associated with the proposed development.

The planning officer's report

10. The planning case officer prepared a report with a recommendation for approval. In summary, the key reasons given for that recommendation were as follows:
- Given the residential character of the immediate locality and the context of surrounding area, the principle of the development and its design, form and appearance were deemed appropriate;
 - the living conditions of adjoining occupiers would be protected from undue harm;
 - the living standards of future occupiers were deemed satisfactory, meeting National Housing Space Standards;
 - the highway impact on the surrounding area would be acceptable; and
 - sustainability aspects and flood risk mitigation measures were controllable using planning conditions.
11. The report noted that there had been 59 responses to public consultation, and all had been objections, and these were summarised under several headings. In terms of neighbouring amenity objections were noted on grounds of loss of light and overshadowing impact; overlooking and loss of privacy; increase noise from additional residents; noise and air pollution impact and disturbance during construction works; and lack of communal amenity/play spaces for children. The report went on to address these various points.
12. Insofar as [REDACTED] amenity is concerned, the report set out the following: "The closest building [REDACTED] ...would be set away from the boundary by 900mm at its closest point and this distance would increase as the building projects rearwards into the site. The building maintains a clear 45-degree angle between the built form and the rear facing windows [REDACTED]". It went on to note the relative position [REDACTED] and windows to the nearest of the proposed new homes, concluding that that daylight and sunlight [REDACTED] would not be adversely affected. The report noted that the only ground floor window [REDACTED] is on the opposite side to the proposed new building, and the proposed separation distances together with the juxtaposition, design and massing of the development would prevent the dwellings from having a significantly overbearing impact [REDACTED].

The committee meeting

13. The planning application was referred to committee for a decision by Members. The case officer gave a brief presentation, referring to the comprehensive report which had been made available and showing slides, which in addition to location and site plan information included a photograph showing the position [REDACTED]. [REDACTED] was able [REDACTED] to give representations against the proposal. The applicant and a Ward member who was against the proposal and who had referred the matter to committee also addressed the committee. Other Members asked questions and the officer gave responses. When the matter moved to a vote, four Members voted against the proposal and six voted in favour. Permission was therefore subsequently granted.

Analysis

14. When considering a planning application, the Council can only take account of material planning considerations. Material considerations relate to the use and development of land in the public interest, and not to private considerations such as reduction in the value of a property. Material considerations include issues such as overlooking, traffic generation and noise. Local opposition for a proposal is not in itself a ground for refusing or granting planning permission, unless is it founded upon valid material planning reasons.

15.

[REDACTED]

16. Some further points [REDACTED] made when [REDACTED] objected to the application were also not relevant to the decision-making process, because they are governed by other means. For example, concerns about noise and other disturbance during the demolition and construction period would be subject to environmental protection legislation and control. I note however that the Council did impose a condition on the planning approval requiring the submission of a Construction Logistics Plan to cover such things as hours of deliveries and parking of vehicles associated with deliveries, site personnel, etc and one reason for this was the interests of amenity of adjoining occupiers. So, if [REDACTED] has concerns that the developer is acting other than in accord with the plan or the planning permission [REDACTED] could report this to the Council for consideration of enforcement action.

17. For those matters of concern to [REDACTED] amenity which were material planning considerations, such as overlooking, the evidence shows that these matters were assessed by the case officer in his report and his professional judgement was that the development as proposed was acceptable in planning terms. The same applies to consideration of potential flood risk: it was considered in the officer's report and the developer had submitted a flood risk assessment which included the Environment Agency's flood map showing the location of a watercourse and that the proposed development is in flood risk zone 1, indicating less than 0.1 per cent chance of flooding occurring each year. The matter was then further considered at committee, where democratic process was followed: Members had the opportunity to listen to representations from both sides [REDACTED], and to question what was proposed and the officer's views on it, before

deciding whether they had enough information to reach a decision and then voting on the application. The questions included matters relating to flood risk for example. There is no evidence that Members approved the application in ignorance of any material facts relating to impact on [REDACTED] amenity.

18. The Ombudsman looks at procedural fault in how decisions have been made and does not consider planning appeals. My investigation cannot consider the merits of the decisions reached or the professional judgement of the officers, provided there has not been procedural fault. Before it made its decision in this case, the Council followed due process in considering the application and I find no evidence of fault contributing to any personal injustice to [REDACTED].

Final decision

19. I have completed my investigation on the basis set out above.

Investigator's decision on behalf of the Ombudsman