

Local Government &
Social Care
OMBUDSMAN

6 January 2021

Mr Derek C Ritson
[REDACTED]

Your ref:

Our ref: 20 008 119

(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]

[REDACTED]

[REDACTED]

[REDACTED]

You have provided a supplementary response 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?). 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 [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. [REDACTED]

[REDACTED] As stated in the draft decision, I took into account the officer's report to committee and viewed the webcast of the committee meeting. Having done so I do not agree with [REDACTED] description of how the topic was dealt with. While [REDACTED] may feel the matter was not adequately examined, 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] 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. [REDACTED] was notified about the application and [REDACTED] lodged [REDACTED] objections with the Council. [REDACTED] principal objections were on grounds of noise, over-development of the site, traffic, and highway concerns, and that the proposed development was not in keeping with the area. In terms of concerns about the impact of development on [REDACTED] amenity, [REDACTED] was concerned about the security of [REDACTED] property.

[REDACTED] also had concerns about planting at the proposed new development [REDACTED].

The planning officer's report

9. 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.
10. 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.
11. Insofar as [REDACTED] amenity is concerned, the report set out the following: "The dwellings would be at least 10 metres away from the boundary [REDACTED] at its closest point. The development would breach the 45-degree angle [REDACTED] however, at the point where the properties breach this, the dwelling would be over 10 metres from the boundary between the site [REDACTED] and over 20 metres from the dwelling itself. The separation distances being proposed combined with the juxtaposition, design and massing of the development would prevent the dwellings from having a significantly overbearing impact upon either [of the existing properties adjoining the applicant site] and both properties will achieve a good level of daylight and sunlight to the rear facing windows and their associated rear garden spaces".

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12. The report also noted that while the application as originally submitted did not meet with the requirements of the Council's supplementary design guidance in respect of the positioning of windows taking account of separation distances, because it would have allowed overlooking [REDACTED], the relevant element had been re-designed to eliminate direct overlooking. The officer also noted that proposed tree planting to the boundary would also assist in screening the development [REDACTED], and in addition the proposed upper floor side windows serve either non-habitable rooms or spaces or serve as secondary windows to the habitable rooms and, as such, they could be conditioned to be obscure glazed and fixed shut below 1.7m to protect the privacy of the future occupiers of the adjoining properties.
 13. Regarding noise concerns the officer noted that although the residential density on the site would increase, current Building Regulations including relevant sound proofing measures would need to be met and so the proposed development would not result in a significant increase in noise disturbance. The officer noted that noise and disturbance during construction works would be controlled by Environmental Health legislation relating to hours of construction and so these matters were not material planning considerations.

The committee meeting

14. 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 [REDACTED]. Representations were heard from a speaker on behalf of residents, the applicant, and a Ward member who was against the proposal and who had referred the matter to 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

15. 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.
16. [REDACTED] feels the approval of planning permission causes [REDACTED] injustice for several reasons.
17. [REDACTED]
18. Some further points [REDACTED] has made were also not relevant to the decision-making process, because they are governed by other means. For example, [REDACTED] concerned about noise and other disturbance such as air pollution during the demolition and construction period, but these 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.

19. For those matters of concern to [REDACTED] amenity which were material planning considerations, such as overlooking and noise from the site once occupied, 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 matter was then further considered at committee, where democratic process was followed: Members had the opportunity to listen to representations from both sides 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. There is no evidence that Members approved the application in ignorance of any material facts relating to impact on [REDACTED] amenity.
20. 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 [REDACTED].

Final decision

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

Investigator's decision on behalf of the Ombudsman