

26 February 2021

Mr Derek C Ritson



Our ref: 19 020 965

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

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Dear Mr Ritson

Complaint against London Borough of Croydon

Thank you for your comments sent in response to my draft decision statement. I have now completed a review of the case file in light of those comments. I am sorry to disappoint you, but my view remains that we cannot uphold your complaint. I am therefore enclosing a final decision statement. This has also been sent to the Council today for its records.

Having taken account of your comments I have made some minor changes to the wording of the final statement. In this letter will also explain why, after considering your comments, I have decided not to change my view. I have not repeated every individual point you have made, but instead summarised your response into appropriate categories.

Professional judgement

In your response to my draft decision, you question the Ombudsman's reluctance to challenge decisions made using professional judgement. You say that natural justice dictates that judgement should be questioned and challenged if considered 'suspect or inappropriate'.

The test for us is not whether something is 'suspect or inappropriate' because this is subjective. We cannot apply our own judgement to a planning decision to decide whether we consider it is appropriate. We are not planning officers. Instead, the objective test we apply is whether a decision is flawed by procedural fault, or maladministration. If an officer's judgement is underpinned by fault, then we may challenge that decision.

In this case, I found no evidence of procedural fault which would allow me to criticise or challenge the Council's decisions. I appreciate you feel strongly that the Council made decisions which were

not compliant with planning policies, and in your view, this is fault. But I do not agree with you for the reasons which I will explain in the following section.

Planning policies

You have made clear in your submissions to me that you feel the Council has either misinterpreted the requirements of some policies or has not provided a reasoned justification for why it recommended a proposal which, in some parts, significantly departed from policy requirements.

There are two general points I must emphasise when we consider complaints a Council has not followed its own planning policies. The first is that policies provide guidance. They do not bind the Council to a particular course of action. Although if the Council is to depart from policy it should give reasons.

Secondly, with most planning applications there are a great number of planning policies – national and local – which may have potential relevance. We expect the Council to show that it has considered relevant policies. This will usually involve something more than simply listing policies. It should involve discussion where relevant. But it is not an exact science. There are times when a Council may say more or less in considering the merits of a planning application and the extent to which it engages with different Council planning policies. What we consider in complaints such as yours is whether the Council gave sufficient regard to the impact of development on the person affected, and in doing so was aware of those planning policies relevant to the assessment.

I am satisfied, on the balance of probabilities, the officer gave sufficient attention to the impact of development whilst taking account of relevant planning policies. If the proposal was not compliant with some of those policies, the officer explained why they thought the departure from the policy was acceptable in planning terms.

Methodology used in daylight assessment.

As my decision sets out, there was a requirement on the applicant to submit a daylight and sunlight analysis study, as per paragraph 2.9.3 of the Council's 'Suburban Design Guide'.

You say the applicant's second study is flawed because it does not take account of window size or the number of windows serving a room. However the Council is not prescriptive in terms of what the assessment should include, and whether it should make reference to the size of any potentially affected windows. Although I recognise you feel the assessment should have included analysis of this specific point, I cannot say the Council was at fault for not insisting upon this.

Furthermore, as my decision also sets out, [REDACTED] made his objections about the daylight assessment known to the Committee. In doing so, he specifically referred to the small size of his windows. Therefore, even if the report did not make this clear, I am satisfied the Committee had enough information to make an informed decision about the impact to any affected windows.

LGSCO complaint statistics

You have quoted from a weekly LGSCO report, although your source is not referenced, so I cannot cross-check for accuracy. You say the statistics show that we uphold only a very small proportion

of the cases we investigate. However, I would suggest our annual complaint review offers a more accurate gauge of the LGSCO's rate of upheld complaints: <https://www.lgo.org.uk/information-centre/reports/annual-review-reports/local-government-complaint-reviews>

Our complaint statistics for 2019-20 tell us:

- *We are finding fault more often: we upheld 61% of complaints we investigated in detail, up from 58% last year*
- *We uphold the highest proportion of complaints about Education and children's services (72%) Councils are putting things right more often. In 13% of upheld cases, councils had already offered a suitable remedy, up from 11% last year*
- *We recommended 1,629 service improvements, up 12% on the previous year*
- *Compliance with our recommendations remains high at 99.4%*

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

A black rectangular redaction box covering the signature of the investigator.

Charlotte Woodfield
Investigator

Enc: Final decision statement

The Ombudsman's final decision

Summary: Mr X complains on behalf of [REDACTED] that the Council made a flawed decision when it approved plans for development close to their home. He says the Council did not properly consider the impact on light and wrongly approved the development despite it failing the relevant tests. We find the Council made a decision which was not impacted by fault. The errors in a daylight study had no bearing on the decision made, and the other issues raised by Mr X are matters of professional judgement which, in the absence of procedural fault, the Ombudsman cannot question.

The complaint

1. Mr X complains on behalf of [REDACTED] about how the Council dealt with an application for a development near their home. Mr X says the Council has not considered the application in line with planning policy and failed to properly address the impact on [REDACTED] home.
2. Mr X says [REDACTED] have suffered injustice in the form of lost amenity.

The Ombudsman's role and powers

3. 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*)
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. During my investigation I discussed the complaint with Mr X and considered the information he submitted.
6. I consulted the plans in question, the daylight studies, relevant planning policies and the webcast of the Council's Planning Committee meetings.
7. I made enquiries of the Council and considered its response.
8. I issued a draft decision inviting comments from Mr X and the Council. I considered any comments received before making a final decision.

What I found

Key background information

9. The Council received a planning application in 2019 to demolish an existing house and build a three-storey block to accommodate nine self-contained flats near [REDACTED] home. Mr X objected to the proposal on behalf of affected residents. The application was referred to the Council's Planning Committee for determination and permission was granted subject to conditions.
10. Mr X has complained about the Council's decision to grant planning permission. He says it has not properly considered the impact on [REDACTED] home, particularly in relation to loss of light. He also argues the application will be overbearing, out of character with the area and not in line with the London Plan.
11. Dissatisfied with the Council's response to his complaint, Mr X approached the Ombudsman for an impartial review. At the Assessment stage of our process, we decided that Mr X's complaint was one that we should not investigate because it is unlikely that we would find fault. We issued a draft decision on that basis.
12. Mr X responded to the draft decision, outlining his objections to our findings. After reviewing his comments, we decided to pass Mr X's case for investigation to look at how the Council considered his points about loss of light and the 45-degree rule. I have investigated these points, and my findings are explained in the section below.
13. However, we did not consider there was fault in Mr X's complaint about compliance with the Local Plan or the style and character of the development, because the concerns he raised were a matter of professional judgement. I maintain that view for the reasons explained below.

Mr X's complaints

Compliance with the Local Plan

14. The Council says the development which Mr X complains about 'marginally' exceeds the habitable rooms per hectare density outlined in policy 3.4 of the London Plan. Mr X disagrees with the Council's method of calculation and says the development is significantly above the London Plan requirements.
15. The London Plan is a material planning consideration. But the policy says it is not appropriate to apply the density matrix mechanistically; it is used as a starting guide to development, and some policy considerations may not align with others.
16. Policies provide guidance; they do not bind the Council to a particular decision, although if the Council is to depart from policy it should give reasons. The Council's role was to weigh up the issues against other material considerations and decide if the proposal was acceptable. The case officer's report details why, in their professional view, the proposed density levels are acceptable. I understand Mr X does not agree with the calculations used, and the Council's decision to grant planning permission. However, the officer used their professional judgement and properly considered the application, taking into account the density matrix in the London Plan, before granting permission. I find no evidence of fault in this part of the decision-making process.

Loss of amenity

17. Mr X says the development is out of character with the area, is overbearing and will have a significant impact on [REDACTED] home. I have considered the

case officer's report to establish how the Council assessed the impact on residential amenity before deciding the proposal was acceptable.

18. The report says the development protects the street scene, complies with the policy recommendations in relation to residential amenity and resembles a large, detached house which preserves the character of the area and neighbouring properties.
19. I understand Mr X does not agree with this assessment, but the case officer was entitled to use their professional judgement about the style and character of the development. The Ombudsman cannot question this judgement unless there is evidence to show it was flawed. I have found no such evidence.

Loss of light and compliance with the 45-degree guidance

20. The '45-degree' Building Research Establishment (BRE) guidance forms part of many council planning processes when assessing the impact of new developments on existing developments. It is a test officers may conduct using the plans and elevation drawings supplied by the planning applicant.
21. If a proposed development does not comply with the 45-degree test, it may be less likely to receive planning permission. This is because the 45-degree tests are indicators of planning harm to the existing property, particularly the decrease in daylight received by the affected windows.
22. However, non-compliance with the test does not mean officers must refuse an application. The test may be one part of the planning officer's assessment of levels of planning harm caused by a proposed development. Each application should be judged on its own facts and circumstances, and officers retain their ability to use their professional judgement.
23. Paragraph 2.9.3 of the Council's 'Suburban Design Guide' says: "Where there is concern that the orientation of the proposal and proximity to neighbouring buildings will limit access to natural light within the proposed and/or neighbouring dwellings, proposals will be required to provide a daylight and sunlight analysis study".
24. Due to the potential impact on the light received into [REDACTED] home, the developer arranged two light analysis studies. The first one in March 2019 concluded:
 - The west elevation of [REDACTED] home may experience an 'adverse impact in terms of daylight and sunlight'. The western side of the house has three relevant windows. Two of those windows serve bathrooms and are 'non-habitable rooms'.
 - The results show the effect on the side windows meet the minimum requirements set by the BRE guidelines and experience a 'negligible impact in terms of daylight and sunlight'.
 - The proposed development meets the recommended levels and is considered acceptable in daylight terms.
25. The planning officer's report concluded, "There would be a small increase in height and a significant increase in depth from the current building but the 45-degree BRE test for loss of light to the rear elevation windows would not be breached. The rear garden to [address removed] faces due north and whilst there are side windows facing towards the application property (ground floor lighting a living room and the two first floor windows lighting bedrooms) all these windows appear (after reviewing historic floor plans) to be secondary in nature. The

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- applicant has also submitted an External Daylight Study which finds satisfactory outcomes for these windows in accordance with BRE guidelines”.
26. The officer recommended approval of the application because they considered the proposed development was “acceptable within the area” and is of “... an acceptable standard”.
 27. A councillor ‘called in’ the planning application and it was considered by the Council’s Planning Committee. I have viewed the webcast recording for the meeting, and the following key points were discussed:
 - Planning officer said the 45-degree line was not exceeded;
 - The density matrix is exceeded, but no harm caused. Housing targets have changed since the matrix was produced in 2006;
 - █████ spoke in objection to say the proposal was overdevelopment, fails the 45-degree test, and his north facing garden will be significantly impacted by lost light. █████ also said there would be overlooking, loss of privacy, and congestion from parking.
 28. Committee members decided, with a vote of six against three, that the application should be deferred for design amendments to overcome the issues raised.
 29. The developers submitted amended plans. The new plans increased the proposed roof height, and so the developers commissioned a second light survey in September 2019, which concluded:
 - There are five relevant windows in █████ home that may be affected by the proposed development.
 - The results show the effect on the side windows meet the minimum requirements set by the BRE guidelines and experience a ‘negligible impact in terms of daylight and sunlight’
 30. The survey did not confirm which of the five windows mentioned serve habitable rooms.
 31. The planning officer wrote a further report in response to the amended plans. It acknowledged the breach of the 45-degree guidance, “As the height of the building has been increased by 1.05m the applicant has submitted a revised Daylight and Sunlight Study which assesses the impact upon [address removed]. The development does marginally break the vertical 45 degree line, however the Daylight and Sunlight Study demonstrates that the effect of the proposal upon the side windows of this neighbour would be negligible and accords with BRE guidelines. A horizontal 45 degree line without obstruction is maintained from the closest rear window of this neighbour to the rear of the proposed building.”
 32. The Planning Committee considered the amended plans. The key points discussed at the meeting were:
 - The planning officer spoke to give their view that harm is not demonstrated. Car parking standards are met. The 45-degree guide is breached, but the proposal meets other planning requirements.
 - █████ reiterated the proposal did not meet the 45-degree guidance and should therefore be refused. He said the second light survey is incomplete. Critical windows are not included, and the study does not consider that his windows are small due to the nature of his house. The report is also silent on the loss of natural light to his rear garden.

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- Councillors discussed the impact [REDACTED]. Some felt there would be impact, but the BRE guidance is not absolute. The amended plans included removal of a garage which may improve light. [REDACTED] garden is not overshadowed for most of the day due to its orientation.
 - Some councillors felt the scheme is dominant in its size and there is a cumulative impact resulting from more than one policy breach.
33. After discussing the merits of the scheme, Committee members voted six, versus three, in favour of approval.
34. Mr X disagrees with the Council's decision. In response to the Ombudsman's first draft decision, Mr X reiterated his complaint was about the Council's failure to recognise the true impact on [REDACTED] and [REDACTED]. He said the Council's decision was flawed because:
- The light survey relates only to windows and internal rooms, not outdoor spaces. The officer's analysis regarding outdoor space was based on guess work only.
 - The light survey contains errors and omissions. The first survey excluded some windows and confused habitable rooms with non-habitable rooms. The Council ignored Mr X's requests for these points to be considered.
 - The development breaches the 45-degree test.
35. When investigating this part of Mr X's complaint, I have considered a floor plan of [REDACTED] home, which shows the location of all windows and doors. I have compared this with the daylight studies, external photographs taken by the Council and internal photographs taken by [REDACTED]
36. Mr X says the first daylight study wrongly concluded that windows five and six served a non-habitable room (bathroom), whereas they in fact serve a bedroom. In my view, the contents of the first daylight study are irrelevant because the findings were superseded by the second study. The Planning Committee made its decision based on the second study and so this is the one which needs to be considered.
37. The second study did not stipulate whether affected windows served habitable rooms or not. It merely assessed the percentage of light lost. Irrespective of whether the rooms are habitable or not, the study found the impact to be negligible.
38. Mr X is correct to point out the study omitted a window, which he refers to as window six. As part of my investigation, I asked Mr X to clarify the location of all affected windows and to confirm whether they are secondary in nature. He explained that one bedroom is served by two windows (windows five and six). Furthermore, window four serves another bedroom which is also dual aspect, as it benefits from a second window.
39. The planning officer and Committee made their decision not only on the findings of the survey, but in conjunction with the floor plans of [REDACTED] home and the officer's photographs. The officer noted in their first report that the affected windows served habitable rooms. [REDACTED] also made this clear when he spoke at the Committee meeting. I am therefore satisfied the Committee had knowledge of the facts and were able to make an informed decision.
40. I find the errors in the first daylight study had no impact on the Council's decision. Furthermore, in my view, the omission of window six from the second study is

unlikely to have had any bearing on the decision. This is because the Council was satisfied the bedroom in question suffered only a 'negligible' impact. It therefore follows that the impact on overall light into the bedroom would be even less, had all parties known the room is served by two windows.

41. I am also satisfied, based on the information seen, that the Committee was made aware of the impact on [REDACTED] garden. Although not included in the study, [REDACTED] made this point clear when he spoke in person at both Committee meetings. The Committee was therefore able to make an informed decision after considering [REDACTED] comments, as well as the location and orientation of his garden in relation to the development, as shown on the plans which were available to them.
42. In my view, the officer and Committee made a decision which was not influenced by procedural fault. Although the original study wrongly designated some windows, the officer made clear in their report that the rooms were habitable. This was also discussed at Committee, and the second study again reiterated a negligible impact on all windows.
43. For the reasons explained above, I do not uphold the complaint.

Final decision

44. I have completed my investigation with a finding of no fault for the reasons explained in this statement.

Investigator's decision on behalf of the Ombudsman