

**Complaint reference:**  
15 014 505

**Complaint against:**  
Bracknell Forest Council

## **The Ombudsman's final decision**

Summary: Mr A complains the Council failed to deal properly with a neighbour's planning application to build a replacement dwelling in the green belt. While there was some fault by the Council in the reporting of measurements in the officer report to the Planning Committee, there are no grounds which warrant further investigation of the complaint by the Ombudsman.

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## **The complaint**

1. Mr A complains the Council failed to deal properly with his neighbour's planning application to build a replacement dwelling in the green belt and as a result the development will impact adversely on his amenity. He complains the Council was biased towards his neighbour; wrongly interpreted Green Belt regulations and accepted understated dimensions and distance measurements which misled Planning Committee members.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
3. The Ombudsman must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. She provides a free service, but must use public money carefully. She may decide not to start or continue with an investigation if she believes:
  - it is unlikely she would find fault, or
  - the fault has not caused injustice to the person who complained, or
  - the injustice is not significant enough to justify her involvement, or
  - it is unlikely she could add to any previous investigation by the Council, or
  - she cannot achieve the outcome someone wants, or
  - there is another body better placed to consider this complaint, or
  - it would be reasonable for the person to ask for a council review or appeal.

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

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## **How I considered this complaint**

4. In considering the complaint I spoke to Mr A and reviewed the information he and the Council provided. I have had sight of the Council's responses to Mr A's complaint under its own complaints procedure and I have viewed the planning documents which relate to the application in question.

## **What I found**

5. Mr A's next door neighbour submitted a planning application to demolish his existing dwelling house and build a new house in its place. Mr A submitted his objections to the proposed development, along with objections from the parish council and four other households in the road.
6. The case officer produced a report for the Council's Planning Committee recommending approval of the application. Mr A commented on this report in advance of the committee meeting, detailing what he saw as the biased nature of it and the flaws within it. These additional comments were summarised in a supplementary report and available for members in full online before the meeting.
7. Having first carried out a site visit, the Planning Committee decided to grant permission for the development in line with officer recommendation. Two members voted against the application.
8. Unhappy with the Committee's decision, Mr A submitted a complaint to the Council which it considered at stage 1 of its complaints procedure but did not uphold his complaint.
9. Having employed the services of an independent planning consultant, Mr A wrote to the Council with details of the faults the consultant had identified in the way the application had been presented by the Planning Department.
10. The Council addressed the issues raised under Stage 2 of its complaints procedure. In commenting on the disparity between the dimensions given in the officer report and those measured from the plans, the Council acknowledged the report did not fully set out the full width and depth of the property at ground floor level. It accepted the report should have been clearer by stating that the dimensions related to the elements of the building that were two storey and that the other single storey elements should also have been referred to.
11. Contrary to Mr A's view, the Council confirmed that when considering whether the proposed replacement dwelling was "materially larger", the comparison was to be made against what it was replacing, rather than with what had been built originally. The Council also disagreed with his view that the floor space of the proposed garage should have been included in the calculation of increased floor space. It explained it was not included because it was not attached to the new house.
12. Mr A's further comments, and those of his consultant, were addressed at the final stage of the complaints procedure but the Council concluded it had not made a flawed decision and did not uphold his complaint.

## **Analysis**

13. During the course of the Council's own consideration of Mr A's complaint, it addressed in some detail the various concerns he had raised. I understand he is not happy with the decision made to grant permission but it is not the Ombudsman's role to review the merits of it. The Council has not said the new

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development will have no impact on him, and it is acknowledged it will be greater in bulk and height to what it replaces, but, having considered matters properly, it concluded there was no harmful impact sufficient to warrant refusal of the application. This is a decision the Council is entitled to make no matter how strongly Mr A may disagree with it.

14. Mr A says he believes the Council has shown bias towards his neighbour but I have seen no evidence to support this claim. That the Council came to a decision with which he disagrees is not evidence of bias and the suggestions Mr A puts forward as possible evidence of bias do not convince me or lead me to accept his claim.
15. In accordance with normal procedures, the case officer prepared a report for Committee where the objections received were noted and considered. Mr A's further comments on the report itself were placed on line for Committee members to see and a summary of them was provided in the supplementary report which accompanied the Committee meeting. It cannot be said, therefore, that members were unaware of Mr A's concerns or that they were not considered.
16. Further evidence of members' consideration of the application is shown by the fact that they carried out a site visit. While Mr A is disappointed the visit was not extended to include a visit to his property there was no requirement for this. Had members wanted to do this, or wanted further information, they could have asked.
17. The Council has already acknowledged that the report did not fully set out the full width and depth of the proposed new building and I note that the distance from Mr A's boundary and roof height were understated. However, in addressing Mr A's complaint, the Council satisfied itself that the dimensions shown on the plans were correct, and therefore enforceable, and that the unclear dimensions in the report did not detract from members' understanding.
18. Mr A's concerns have been seriously considered by the Council and its Chief Executive sought specific legal advice from planning lawyers to query whether anything had happened which would justify the rescinding of the permission. The advice he received was that there was not. The Council also sought the view of the Chair of the Planning Committee who confirmed that in his view had the Committee been presented with the full and correct information on the measurements in the report there was no likelihood it would have decided to refuse the application.
19. Mr A has said it is unrealistic to expect Committee members to have had sufficient time to fully understand the report and that they may not be up to the job of determining such an application, accepting as they usually do the planning officer's report and conclusions. However, this view does not assist Mr A's case, particularly as two members of the Committee did vote against the application. Mr A has attempted to explain this by suggesting this was because the councillors concerned were more familiar with the area but I am not convinced by this argument.
20. Mr A believes the Council misinterpreted relevant planning policy when it considered his neighbour's application and decided to grant permission. Specifically he has referred to paragraph 89 of the National Planning Policy Framework (NPPF) and paragraphs within its Local Plan which relate to extensions/alterations and replacement dwellings in the green belt.
21. Paragraph 89 of the NPPF states a local planning authority should regard the construction of new buildings as inappropriate in the green belt. It lists one of the

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exceptions to this as being “*the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces*”. Mr A has argued that on reaching a view on whether the building is ‘materially larger’ reference should be made to the original building. However, this is not what the paragraph says. To support his view Mr A has said that using the existing size of a dwelling would be unworkable because within only a couple of developments a massive property would result. However, the point here is that planning permission would be required and if what was proposed was found to be inappropriate development permission would not be granted.

22. Mr A has also made reference to paragraphs 4.8, 4.35 and 4.38 of the Council’s Local Plan to support his view that the proposed dwelling should be measured against the original dwelling and that an increase in size over 40% should be viewed as disproportionate.
23. Paragraph 4.8 is headed “Residential extension, alteration or replacement within the Green Belt”. In referring to new dwellings it says permitted development rights may be taken away to ensure the overall scale of the development does not increase on rebuilding. It then goes on to say the Council will also seek “*to ensure that extension or alteration to a dwelling does not result in a disproportionate addition over and above the size of the original building*”. The wording of this paragraph therefore distinguishes between replacement and extension/alteration and it does not support Mr A’s view that the reference point should be the original rather than the existing dwelling. The reference to 40% floor area in paragraph 4.38 falls under the heading “Limited extensions and alterations to existing dwellings” and is clear in referring to extensions and alterations. There is no mention of replacement dwellings within it. In contrast, paragraph 4.35 is headed “Replacement of existing dwellings” and refers to a new dwelling not being materially larger than the dwelling it replaces.
24. Mr A raised concerns about the nature of the test used to measure loss of light to his property. However, the Council used the correct test and was right in treating a side window differently from a main window, regardless of the amount of light received through the side window. He also says officers did not take sufficient steps to make his neighbour change his plans for the siting of the new dwelling to a position he would have found more acceptable. But the Council has to determine the application submitted to it and while it did suggest to Mr A’s neighbour that he consider resiting the dwelling, the neighbour was not amenable to this suggestion.
25. Mr A has queried the Council’s view that there was no requirement for the new garage to have been added to the house size because it is a detached garage and not connected to the house. I have seen no evidence from Mr A to the contrary nor read any planning guidelines which disputes what the Council says.
26. I understand Mr A is very unhappy with the Council’s decision on his neighbour’s application, and that it will have some impact on him. However, while there was some limited fault in the reporting of measurements in the officer report, I cannot conclude but for this fault a different outcome would have resulted.

## **Final decision**

27. While there was some fault by the Council in the reporting of measurements in the officer report to Committee, there are no grounds which warrant any further investigation of the complaint by the Ombudsman.

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**Investigator's decision on behalf of the Ombudsman**