

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

Summary: Mr C complained the Council failed to follow planning guidance and procedures before it discharged the planning conditions for a large development of homes in his local area. As a result, he said there was a risk of damage to protected trees and injury to pedestrians. We found the Council and its Tree Officer properly considered the Developer's plans before discharging the planning conditions. It made decisions it was entitled to make, and we cannot therefore criticise the merits of its decisions.

---

## **The complaint**

1. The complainant, whom I shall refer to as Mr C, complained about the Council's handling of a planning application for a development of homes in a conservation area. He said it wrongly discharged planning conditions for the site's drainage, fencing, and planting of vegetation.
2. As a result, Mr C said existing protected trees are at risk of damage. He also said pedestrians may be at risk as the highway can be easily accessed and the rural aspect of the area was impacted.

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

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. 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. 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**

6. As part of my investigation, I have:
  - considered Mr C's complaint and the Council's responses;

- 
- discussed the complaint with Mr C;
  - considered the information provided by Mr C and the planning documents available on the Council's website;
  - considered relevant law, guidance, and policy; and
  - given Mr C and the Council the opportunity to comment on a draft version of this decision and considered the comment I received.

## **What I found**

### **Relevant Law, Guidance, and Policy**

7. The Town and Country Planning Act 1990 (the Act) says protected trees cannot be cut down, uprooted, wilfully damaged or destroyed without the local planning authority's consent.
8. The Town and Country Planning (General Permitted Development (England) Order 2015 sets out circumstances where planning permission is not required before a development or works takes place. This includes sewage works by statutory undertakers.
9. The National Joint Utilities Group (Volume 4) sets out utility industry guidelines for the planning, installation and maintenance of utility apparatus in proximity to trees. This includes sewage works and drains. It refers to the need to consider British Standard recommendations and to consult with a local authority's Tree Officer for further guidance.
10. The British Standard, BS 5837 – Trees in Relation to Design, Demolition and Construction – Recommendations' (the Standard) details the steps that should be taken to ensure trees are appropriately and successfully retained when a development takes place. A local planning authority should consider the Standard when making decisions on proposed developments, which may impact trees.
11. The Standard also says, in circumstances where development is likely to detrimentally affect any retained trees, an Arboricultural Method Statement is normally required. This should set out the methodology for the implementation of any aspect of the development.

### **What happened**

12. Mr C lives in a rural conservation area.
13. In 2018 the Council considered a planning application for a large development of homes within its conservation area. The Council decided to refuse the planning application and the Developer appealed the Council's decision to the Planning Inspector.
14. In 2020 the Planning Inspector granted the Developer planning permission for the development. This was subject to several conditions, including:
  - (Drainage) a strategy for surface water and foul drainage had to be submitted to the Planning Authority for its approval, including details for the connection to the off-site foul sewers;
  - (Boundary treatment) an appropriate boundary treatment had to be submitted to and agreed by the Local Planning Authority. The Scheme should provide for fencing and for the existing landscaping to be reinforced to prevent pedestrian access to the highway;

- 
- (Tree and plant replacement) for up to five years after the development was completed, any trees or plants which die as a result of the development should be replaced with similar size and species;
  - (Tree pits) full details of the proposed tree pits should be submitted and approved by the Local Planning Authority. The details should include drawings, use of guards and other protective and irrigation measures; and
  - (Tree protection) A tree protection plan and the appropriate working method should be submitted to and approved by the Local Planning Authority.
15. The Developer provided the plans and drawings as set out in the conditions to the Council. This included its Arboricultural Method Statement (Method Statement).
  16. The Council discharged some conditions, but its Tree Officer was not satisfied with the Developer's drainage, tree pit, and tree protection plans. It asked the Developer to update its plans to address its Tree Officer's concerns.
  17. In late 2020 the Developer provided amended plans for the tree pits, the tree protection, and the drainage. It asked the Council to discharge the conditions.
  18. Mr C made objections on the Developer's applications to discharge the conditions.
  19. The Council consulted with the relevant statutory consultees, who had no objections to the discharge. It also consulted with its Tree Officer, who said he had met with the Developer and changes had been made to its Method Statement. He was therefore satisfied this would minimise harm to trees. And so, the Council discharged the conditions.
  20. In early 2021 the Developer provided an updated Method Statement which included its plans for offsite foul drainage, which would be connected to sewers under the highway.
  21. The Council's Tree Officer was satisfied with the Developers off-site drainage plans and Method Statement, but he said the tree protection condition could not be fully discharged until the development was completed. This was because it would then be possible to confirm the trees had been protected and appropriate working methods had been used.
  22. The Council also discharged the boundary treatment condition, as its Tree Officer was satisfied with the Developer's plans. This was after the Developer had provided the Officer with further details on its plans and how it would minimise any damage to trees and vegetation.

### **Mr C's complaints**

23. Mr C made several complaints to the Council about its handling of the planning application and its decisions to discharge the planning conditions. He said:
  - it failed to add a condition about road closures;
  - it delayed uploading plans and document about the development to its website and said some plans were no longer available;
  - it had approved the Method Statement when there was no reference to the foul drainage works and its impact on trees. And later versions of the Statement failed to refer to the relevant National Joint Utilities Group guidance for the drainage works near to trees;
  - it wrongly discharged the drainage condition as the Method Statement did not provide enough information, including details its Tree Officer had asked for;

- 
- it wrongly discharged the boundary treatment condition because pedestrians could easily climb the timber post fence. He said the Developer should install the weldmesh fence as originally planned;
  - the boundary treatment condition should also not have been discharged because the planting was less than the original plans and over a shorter length;
  - it wrongly said it could not comment on the foul drainage connection under the highway as this is off-site and not under its control. Mr C said it failed to consult with the County Council. He also said the Council has taken different approaches on other planning applications where it had made comments; and
  - he questioned why the Council had not considered an alternative route for the drainage from the development to the Highway to prevent damage to the trees.
24. The Council responded to Mr C's complaints and apologised if it had failed to respond to some of his emails. It did not uphold his complaints and said its complaints procedure should not be used to raise concerns about planning matters or breaches of planning control. However, it decided to provide a response to his concerns, it said:
- it had followed proper procedure and consulted statutory and non-statutory consultees, including its Tree Officer;
  - the developer had submitted details for a Construction Traffic Management Plan. This was as set out in the planning condition imposed by the Planning Inspector. It could not impose additional conditions to an approved planning application;
  - Mr C's concerns about the drainage strategy for the proposed connection to the Highway (off-site drainage) was not under the Council's control. It said he should direct his concerns to the statutory undertaker, Thames Water, and the Highway Authority. However, it said its Tree Officer raised issues with the Developer's first plans for the off-site drainage, but had no objections to the approved plans; and
  - it had made wrongly delayed publicising the amended details for the Developer's boundary treatment plans (fencing). However, it will consider Mr C's comments before it makes its decision.
25. Mr C was not satisfied with the Council's response and asked the Ombudsman to consider his complaint.

### **Analysis**

26. The Ombudsman is not a planning appeal body and so he cannot substitute his judgement for that of the Council in the absence of fault in the process leading to the decision. Whether the Council's judgement was right or wrong is not for the Ombudsman to adjudicate on. The Ombudsman examines the process leading up to the decision.

### **Drainage**

27. Mr C complained about the Developer's plans for drainage under the Highway (off-site drainage) and drainage from the development to the boundary of the application site (on-site drainage)
28. The off-site drainage under the Highway was not under the Council's control and was approved by the Highway's Authority. The Council's Tree Officer made comments on the Developer's original off-site plans but had no objections to the

---

approved plans. I have therefore found no fault by the Council on this matter. I acknowledge Mr C feels the Council should have worked closer with the Highway Authority and said it had done so for other developments. However, the Council was entitled to consider each development on its own merits and decide when to make any comments to the Highways Authority. Any concern Mr C may have about the off-site drainage should be brought to the attention of the Highways Authority.

29. The on-site drainage was subject to a planning condition imposed by the Planning Inspector, which said the Developer should submit its drainage plans for the Council's approval.
30. Mr C said the Council wrongly discharged the condition. This was because the Developer's Method Statement did not reference the National Joint Utilities Group guidance and set out how the works met the British Standard guidance. He also disagreed with the approved drainage location set out in the plans and raised concerns about the impact on the nearby protected trees.
31. I have not found fault in the process the Council followed to discharge the on-site drainage condition. In reaching my view I am conscious that:
  - Mr C made comments on the Developer's application to have the drainage condition discharged, which the Council considered;
  - the Council considered the Developer's application and its plans. Its Tree Officer was not satisfied with the plans and asked for more detail. He also met with the Developer and its arboriculturist.
  - the Council and its Tree Officer were satisfied with the Developer's amended plans and discharged the condition;
  - while the approved plans may not have included reference to the National Joint Utilities Group Guidance, it was agreed that works near protected trees would be supervised by the Developer's Arboriculturist and the Council's Tree Officer. Any concerns about excavations near tree roots would then be decided; and
  - when the Developer completes the works, the Council will do an inspection to assess the works and any damage caused.
32. I understand Mr C believes the drainage works near the protected trees must meet the Guidance and the Standard. However, while the Council should consider these, it is entitled to reach its view on how these should be applied to the development. This may mean the guidance is only partly adhered to.
33. In addition, the Planning Inspector included a condition for the replacement of damaged trees during the development and up to five years after. This shows he accepted the development may cause damage to some trees. The purpose of the Method Statement was therefore not to remove this risk of damage, but to limit it to a level the Council was satisfied with. As the Council properly considered the Developer's plans and Mr C's concerns, I cannot therefore criticise the merits of its decision.

#### **Boundary treatment**

34. Mr C said the Council was wrong to approve the Developer's plans for a timber post fence, as the original plans approved a weldmesh fence. He also said the vegetation to reinforce the fence and landscape was less than originally agreed.
35. The original proposal for a weldmesh fence and vegetation was partly to prevent pedestrian access to the Highway. The Council found a timber post fence was

---

enough to prevent this and the Developer provided new plans. Mr C disagreed with the Council's view and objected to the Developer's plans and application to discharge of the condition.

36. I recognise Mr C's view a timber post fence may be more scalable and there was therefore a greater risk of pedestrian access to the Highway. However, I have not found fault by the Council. This is because the Condition does not require the fence to be climb proof. Also, it is not fault for a Council to propose or agree to changes in the approved plans after a planning decision has been made. It considered Mr C's objections and the plans it had received for the fence and vegetation. It was therefore entitled to reach its view, and I cannot therefore criticise its decision.

### **Other concerns**

37. Mr C said some planning documents were no longer available on the Council's website. While I understand this may have caused him some concern, it may be previous versions of documents were removed to avoid uncertainty. In any event, if Mr C would like access to such document, he can ask the Council to provide these.
38. Mr C said the Council wrongly discharged planning conditions before the Developer provided the full plans and information. I have not found fault by the Council on this matter. However, the planning process can become complex when planning conditions are discharged. This is because some conditions may be discharged, but further works or information may be required before it is fully discharged. This may not be until several months later. Based on the information available, I cannot say if the Council may have discharged a condition before it should have. However, even if it did, I am not satisfied this caused Mr C a personal injustice, nor there is a significant public interest concern to be considered. This is because the Developer has since provided more details and relevant plans for the conditions.

### **Final decision**

39. I have completed my investigation with a finding of no fault by the Council.

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