

Section J: Planning

J1: Development plan

The importance of members abiding by the *National Code of Local Government Conduct* – need for councils to have proper regard to the requirement to hold meetings in public unless there is clear statutory authority not to do so

1. Mr Newman complained about the way that a former council administered the process which would eventually lead to the approval of the development plan for the area where he lived. He complained in particular that:
 - a named councillor failed to declare an interest and therefore wrongly took part in proceedings; and
 - the relevant meeting was held in camera.
4. A large number of objections were received regarding the proposed designation of site B, all from people living in the west, including Mr Newman. Following these objections officers recommended to the forward plans sub-committee that site A should be allocated for development – ie as originally intended.
5. The meeting decided not to accept the recommendation for site A and decided upon site B, though for a smaller and slightly different area from that originally proposed. That became the proposal to go to a local plan inquiry to be held by an inspector appointed by the Secretary of State for the Environment.

He said that as a result the legitimate interests of residents were frustrated and development was now more likely on land close to his home which he believed would be detrimental to his amenities.

What happened

2. In formulating its development plan policies the former council prepared a consultative document and circulated it for public comment. It contained proposals for the allocation of additional land for housing throughout the borough, including land on the east side of the village in which Mr Newman lived (site A).
3. No objections were received about this proposal other than a letter from the parish council which suggested an alternative site to the west. In view of this objection, in setting out its proposals for the draft version of the local plan, the council designated an alternative piece of land to the west for residential purposes (site B).

The councillor's involvement

6. The councillor's home was adjacent to site A. Development there would clearly affect his amenity. But the councillor played a substantial part in the meeting and he argued strongly for site B. One officer involved at the time believed that the councillor was instrumental in overturning the recommendation (the other officers could not say so with certainty). Officers said generally that the councillor played a leading role in arguing for site B and that he was a well known and well respected member of the committee.

7. The Ombudsman said that the councillor clearly had an interest in the details of the local plan. His home would be affected by the proposal. That was an interest which was clear and substantial. That he was a local representative was not sufficient to allow the relevant rules or guidance to be overcome. He should have avoided any involvement in this matter. Had he not taken part then it seemed quite possible that the officers' choice, site A, would have been chosen. That was the measure of the injustice arising from the maladministration. The Ombudsman recommended the council should apprise the inspector who would deal with the public inquiry of her concerns. Should the inspector approve the council's actual recommendation of site B, then the present council should itself reconsider the matter and come to its own view on which site to choose.

Meeting in camera

8. On the question of holding the meeting in camera, the Ombudsman said she could understand why the council might wish to keep from the public matters which undoubtedly would affect the value of land owned

by individual citizens. But this information will inevitably become public knowledge where local plans are concerned. The Ombudsman could not easily square the council's decision with the precise wording of the law. In her view the council misdirected itself and was wrong to hold the meeting in camera. That was maladministration but there was no injustice arising from that failure.

Advice to council

9. The Ombudsman advised the present council to ensure that councillors were aware of the requirements of the *National Code of Local Government Conduct* so as to avoid similar failures in future; give proper consideration to when it is and is not appropriate to hold meetings in camera; and pay Mr Newman £150 in recognition of his time and trouble in making his complaints known.

(Report 95/C/4655)

J2: Grant of permission

Inappropriateness of a political group on a council taking a decision about how members of the group should vote on a planning application

1. Mr Trent, on behalf of several local residents, complained that there were failings in the way that a council considered a planning application for a parcel sorting depot near his home.
2. The application was controversial and the decision on it was made at a special meeting of the whole council. The planning officer recommended approval. The council also had a report from the chief executive in which he set out advice about the likely risks of refusing planning permission unless there were cogent, precise, specific and relevant reasons.
3. The Ombudsman did not uphold complaints about inadequate neighbour notification; about the contents of the planning officer's report; or the fact that an extraordinary meeting of the council was called in order to avoid delay.
4. The Ombudsman did, however, comment adversely on the fact that the majority political group on the council held a private meeting a few days prior to the special council meeting, when members voted on whether there should be a group decision to support the application and it was agreed by a majority that there should be. It seemed to him that at least some members of the group brought to the council meeting an irrelevant consideration which weighed heavily with them.
5. There was some confusion as to whether the decision of the group to support the application constituted a party 'whip', breach of which might transgress group loyalty and so provoke disciplinary action against the offending member. The decision was not minuted, and some members said they were sure a whip was not imposed. However, most members felt the group decision could be enforced by disciplinary action, two group members who had previously opposed the application changed their minds after the group decision, and one did so solely because of it; another continued to oppose the application while clearly stating that the group decision had bound group members to a different course of action. After his vote he was informally criticised by other members of the group.
6. The Ombudsman said:

"It is clear, therefore, that many group members did feel that the group decision carried with it the force of disciplinary action if it were opposed. For those members it became an instruction which was intended to fetter their discretion when it came to a vote. It caused at least one member to suspend judgement, close his mind to the reservations he continued to feel about the application, and vote for its approval. This was an entirely inappropriate way for members to approach the decision they were called upon to make. They had to take into account only relevant planning considerations, some of which may only have come to their attention between the group meeting and the council meeting or even at the council debate itself; they had to ignore irrelevant considerations, as the chief executive advised, and one of those was the group decision to vote in favour of the application. It was not possible for the group to define policy as to the existence of facts or the weight to be given to them. To establish group policy in this way when determining a planning application was, in my view, maladministration."

(Report 94/B/4062)

J3: Grant of permission

Members acting in breach of the *National Code of Local Government Conduct* – involvement of members who were employees of an applicant for planning permission – reference in a political group meeting to a donation to party funds by the applicant

1. The chairman of a local residents' association complained that a council failed to deal properly with an application for planning permission in respect of a public house. The Ombudsman found that there were some procedural faults and that three members acted in breach of the *National Code of Local Government Conduct*.
2. The application was approved contrary to the recommendation of the planning officers. The council's own development control code of practice required that in those circumstances, members' reasons for granting planning permission should be formally recorded in the minutes of the meeting. That was not done and the Ombudsman found that was maladministration.
3. Two members were employees of the applicant. Both members, at different times, contacted council officers about the application to request that it should go to committee rather than being decided by the officers under delegated powers. One of the members also approached the chairman of the development control sub-committee. These actions were in breach of the *National Code* and also in breach of the council's own code.
4. One of the members said that he saw the *National Code* only shortly before he was interviewed in the course of the investigation. He also thought he had not seen the council's own development control code of practice. The Ombudsman said these were astonishing admissions, particularly by a person who was, for a while, vice-chairman of the development control sub-committee.
5. The Ombudsman also criticised the actions of the chairman of the development control sub-committee. At a meeting of his political group, prior to the relevant committee meeting, he mentioned that he had been told that the applicant had made a large donation to a local association of their political party. The Ombudsman said that the member should not have made any reference to this. It was not a material planning consideration and he laid himself open to the suspicion that his remarks were intended to influence his fellow members. A prudent chairman would have reported to the chief executive that he had been given this information and spoken of it to no one else. The Ombudsman accepted that the member did not act out of any improper motive, but his reference to the donation was clearly a breach of the *National Code*.
6. The Ombudsman commented:
"Planning decisions are often controversial, and they may substantially affect people's financial interest or their amenity for good or ill. Decisions on planning matters should be made disinterestedly and solely on planning grounds. What is worrying about this case is that it has caused people to doubt the propriety of the way the council deals with planning applications."

(Report 94/A/3423)

J4: Grant of permission

The handling of information received at short notice – failure to consider reconsultation on revised plans

1. This was a case where there were objections from neighbours to an application for the erection of ten flats. The council was concerned about the effect of the proposed flats on neighbouring property and, following a site meeting, members asked officers to try to negotiate changes to the roof line of the flats.
2. The applicant did revise the plans, but the plans were received only five minutes before the start of the committee meeting, at which the application was to be considered. The Ombudsman commented:

“I am not persuaded that officer A had sufficient time to examine and assess the changes properly before the revised application was reported to the committee. It seems to me that officer A would have been better advised to have told members that revised plans had not been received in time to put them to the meeting. I consider that members have a

duty to be sure that they fully understand a proposal before granting permission even if, as in this case, they were anxious to avoid further delay. I do not believe that members were aware of all the relevant details of the design of the flats, particularly the position of the windows closest to Miss Alcott’s house, when they granted consent. This amounts to maladministration.”

3. The Ombudsman also observed that there had been strong objections to the application from Miss Alcott’s professional advisers. The officers should have considered, in the light of the advice in the DoE’s Circular 15/92, whether her advisers should have been given the opportunity to comment on the revised plans. Failure to consider consulting in those circumstances was also maladministration.

(Report 94/B/2675)

J5: Grant of permission

The importance of deciding planning applications as the law requires in accordance with the development plan unless material considerations indicate otherwise

1. A council had to consider an application to build a primary school on a site in the green belt. The application was made by the council itself and the proposal was contrary to the green belt subject local plan.
2. Officers properly explained the application to the development control sub-committee and recommended refusal. Objections which had been made were also taken into account.
3. The application should have been dealt with in accordance with the green belt subject local plan unless material considerations indicated otherwise. That was a legal requirement. The starting point for the council's consideration therefore should have been refusal, and approval should only have been granted if there were special planning grounds.
4. Some of the sub-committee members did not properly understand the test they should have applied in determining the application. A significant number of members (the majority of those who voted in favour of the application) used a different test: that as long as the proposed development did not cause demonstrable harm to the green belt it could be approved. The sub-committee discussed the availability of an alternative site. It was correct to consider that site but its availability could only support the refusal of the application before the sub-committee since the alternative site was not in the green belt. But the members compared the merits of the two sites, and argued that the application site was better.
5. The fact that the proper test to apply was not clearly understood was particularly important since the sub-committee was charged with determining the council's own application. The Ombudsman found maladministration in the failure by at least some members of the sub-committee to apply the proper test. The decision was not in accordance with the council's own policy and the sub-committee gave no reasons for going against that policy.
6. The injustice to the complainants was the lost opportunity to have the matter properly considered and decided. The complaint was made by an organisation interested in the environment and the complainants were not directly affected by the development. The Ombudsman considered that no quantifiable injustice to them resulted from the maladministration which would justify a recommendation for the payment of compensation. They were however, entitled to a small sum to cover their time and trouble in making their complaint.
7. The Ombudsman recommended that the council should ensure that its members were aware of the law and policy which they were charged with applying, and of the need to provide reasons if they decided to go against the council's policy.

(Report 93/C/4413)

J6: Grant of permission

The importance of taking all relevant information into account in making a decision – necessity of not taking account of irrelevant considerations – importance of notifying neighbours of an application where amenity is a relevant issue

1. Mr Axminster complained that a council had granted planning permission for a car repair business next to his property. He said that permission should not have been granted, because the location was unsuitable (being a rural area). Mr Axminster also said the grant of permission had devalued his house and that the activities of the repair business had caused nuisance and deprived him of the quiet enjoyment of his home.
4. A new planning application was made. Mr Axminster was not aware of it. If he had been, he would have objected on the grounds of loss of amenity. The council granted permission for a five-year period, the permission being personal to the neighbour.

The handling of planning applications

What happened

2. In 1990 the council authorised enforcement action against Mr Axminster's neighbour for the unauthorised change of use of his property.
3. Before any enforcement notice was served, the neighbour applied for planning permission retrospectively to regularise the unauthorised use and retain a workshop which he had erected without the benefit of planning permission. The council granted planning permission subject to conditions. The most significant conditions were that permission should be for two years only; that it should be for the benefit of the neighbour only; and that he should construct a new access. The repair business operated during the following two years but did not comply with two of the planning conditions, including the condition which called for an improved access.

5. The Ombudsman made a number of observations about the handling of the planning applications. He began:

"I do not criticise the merits of a planning decision taken properly, even though people may disagree with it. I may, however, criticise a decision if I see evidence of fault in the way in which it was taken. As a general rule, it is for officers to recommend how a planning application should be determined; but the decision is a matter for the discretion of members. A planning committee has wide discretion to reach the decision it considers fit on the facts before it. But I do not consider that discretion to be unlimited. Officers' advice is given to guide members on the material planning considerations which they are entitled to take into account in reaching their decisions. In addition, both district and county councils have adopted policies; and central government has issued guidance and advice. There may, of course, be exceptional circumstances where members decide that although an application conflicts with policy and with government advice, the planning considerations in the particular case outweigh the reasons for refusal of planning permission."

6. The officers' advice was clear that on grounds of policy, neighbour amenity, and highway safety this was an application which, in their view, should be refused. Indeed, the council had resolved just a year before to enforce against the applicant's use and development of the site. Members knew, however, that there was some local support for the application and they visited the site to see it for themselves. That was a perfectly proper step in weighing up the material planning considerations. Exceptionally, too, the personal circumstances of the applicant might have been a further material planning consideration to weigh in the balance, although one that had to be considered with great caution and with the benefit of full officer advice.

Irrelevant considerations

7. It seemed to the Ombudsman that members permitted irrelevant considerations to enter their deliberations. These were not the personal circumstances of the applicant but members' perception of his personal qualities – his local background, his helpfulness, his popularity in the community. That a planning applicant is a nice man is insufficient reason to disregard the policies of the district and county adopted plans, or the other material planning considerations that members had to take into account. The Ombudsman was not satisfied that members were fully advised of the important strictures they had to bear in mind when considering personal circumstances. Taking into account irrelevant matters, allowing them to outweigh important planning considerations, and failing to take fully into account government guidance on personal circumstances, amounted to maladministration.

Amenity

8. The decision on the second application was made in accordance with the officers' recommendation for approval, apparently based on a lack of evidence of adverse impact on neighbours, and in the belief that the applicant's failure to construct an access in accordance with the original condition had somehow prevented him from testing the viability of his enterprise.
9. Given that neighbour amenity was such an important factor in the decision to recommend a further temporary condition, it seemed to the Ombudsman that this should have been tested by notifying neighbours directly of the new planning application. Failure to do so in these circumstances was maladministration.
10. Moreover the Ombudsman was not satisfied that members, when they came to consider the second application, were made fully aware of the policy context, or of the government guidance about personal conditions and the renewal of temporary conditions. Failure to take these matters into account when considering the second application was also maladministration.
11. The Ombudsman considered that if Mr Axminster had been notified of the second planning application he would have objected. If members had been in receipt of that objection (and possibly others), as well as full guidance from officers on all the material planning considerations which they needed to take into account, it was extremely unlikely that the second application would have been approved. Thus Mr Axminster would have been saved five years of avoidable loss of amenity. The Ombudsman was not impressed by the council's argument that Mr Axminster's proper course was to

complain to the environmental health department who could investigate whether there was a statutory nuisance. He had complained to the council, and it should have used whatever resources it felt necessary to help him resolve his difficulties.

Recommended action

12. To remedy the injustice, the council was recommended to pay Mr Axminster £1,000 per year, from the date of the second permission until that expired, or the business ceased to operate, whichever was the sooner, and to pay Mr Axminster £250 for his

time and trouble in pursuing the complaint.

13. The Ombudsman also recommended the council to review its practice on notifying individuals of planning applications which could, if granted, affect their amenity, and to ensure that members were given firm guidance on the propriety of granting planning permission wherever the personal circumstances of the applicant were considered to be a material planning consideration.

(Report 94/B/5000)

J7: Grant of permission

Importance of ensuring that planning conditions are enforceable – need for committees to have a proper assessment of a proposal before making a decision

1. Mrs Green complained that there was maladministration in the way a council dealt with her concern about her amenity when it granted planning permission for development of a site adjoining her home.
2. Permission had been given to add an extra storey to a building on the site on appeal. The application about which Mrs Green complained was for amendments to this approval, including adding a row of garages along Mrs Green's boundary.
3. The planning officer negotiated amendments to the parking and landscaping proposals in the application. At the meeting of the relevant sub-committee the local member put forward a proposal, which the sub-committee agreed, to attach to the permission a condition requiring a landscaped strip between the proposed new garages and the boundary with Mrs Green's garden. This was when things went wrong, the Ombudsman said.
4. The submitted plans showed the garages directly abutting the boundary. It should have been evident to the council that the condition and the approved plan were mutually incompatible, and that it would not be possible to incorporate additional landscaping without amending the plans. As it was, the council granted planning permission subject to a condition it could not enforce.

5. The prudent course would have been for the sub-committee to defer determination of the application to allow the council's officers to investigate the scope for further landscaping within the confines of the site, and the implications for parking provision, and to advise members about this.
6. The Ombudsman considered what would have happened if they had done so. He was persuaded by the evidence that the developers would not have been able or willing to submit amended proposals with increased landscaping between the block and Mrs Green's property. The council believed that the garages were acceptable, and it was aware of the terms of the appeal decision. The developers were unwilling to replace the garages with open parking spaces. The council's arboriculturist said the provision of a landscaping strip was not compatible with garages; there were no practical alternatives for screen planting which would have made a significant difference to Mrs Green; and planting there had not been recommended previously in connection with an earlier application. The councillors interviewed said that if the application had been submitted for determination without additional landscaping they would have been guided by the officers' advice, and the previous appeal decision. On the

balance of all the available evidence, the Ombudsman considered that the sub-committee would not have refused permission for the scheme without the extra landscaping.

7. The Ombudsman said:

"Mrs Green finds the garages unsightly and she considers that the council should not have allowed them to be built. But the council has to determine applications for planning permission in accordance with the law. In its view there was no sustainable reason to refuse permission. I have no grounds to disagree. Nevertheless Mrs Green's expectations were raised by the imposition of the landscaping condition and it took the council some considerable time to reach a final decision about what to do. Mrs Green experienced a good deal of time, trouble, and inconvenience in correspondence about the matter, in researching and making representations about possible planting schemes, and then in pursuing her complaints with the council and with me. I consider that much of this would have been avoided if the application had been properly considered at the outset."

8. The council agreed to pay Mrs Green £350. The Ombudsman considered that this was fair and so decided to discontinue the investigation.

(Report 94/A/4586)

J8: Members' interests

The importance of members carefully following the *National Code of Local Government Conduct* – inappropriateness of a member being involved in a deputation to the council where a personal interest was involved

1. Three people complained about the way a council handled a planning application for development of land adjoining their gardens; and in particular about the way the council's arrangements for deputations of members of the public to address committee meetings were operated. Among other things, they complained that two members of the council did not properly declare an interest in the planning application.

which was clear and substantial. The Ombudsman commented:

"There are occasions when a councillor loses the right to act as a private individual and should ask another councillor to represent her legitimate, personal and private interests as a 'constituent'. I consider this to be one of those occasions. In my view no one could reasonably have considered that Councillor Mrs X was acting solely as an ordinary member of the public when she spoke in favour of the proposed development. A member cannot divorce herself from the fact that she is a member and will be seen by fellow members and the public as such. Indeed, her husband and fellow councillor was a member of the committee she was addressing."
2. One of those members was on the planning committee. He declared an interest because he lived near to the site, but he did not consider that his interest was so great that it should be regarded as clear and substantial. He remained in the meeting, though he did not speak or vote.
3. The wife of that member was also a member of the council, but not of the planning committee. She attended the meeting as part of a deputation addressing the committee and speaking in favour of the application. She said other residents in the area had asked her to speak on their behalf. She took the view that she would have had to declare an interest if she was on the planning committee, but she was entitled to address the committee as a private individual.
4. The Ombudsman noted that the two members lived about 50 metres from the site, knew the site well and considered it to be an eyesore, and were in favour of the development proposed. They also knew the owner and had rented part of the site from him in the past. It seemed clear to the Ombudsman therefore that, for all those reasons, the two members had a private or personal interest in the proposed development
5. The Ombudsman found that Councillor Mrs X's participation at the planning committee meeting was a breach of the *National Code*. Moreover, as his interest was clear and substantial, Councillor Mr X should not only have declared that interest but withdrawn from the meeting. The Ombudsman found the actions and omissions by the two councillors to be maladministration by the council.

(Report 93/B/5301)

J9: Members' interests

Illustrations of circumstances where a declaration of interest is not required, and circumstances where it is – position of a member who was formerly the deputy head of a school attended by applicants for planning permission and others

1. A woman complained on her own and her neighbours' behalf about the way a council decided to grant planning permission for a development in their street. This was for the conversion of a house into a nursery school which needed to move from its existing site. Most residents in the street objected to the proposal.

Interests declared

2. Two members of the planning committee declared interests and took no part – one because he was related through marriage to the owner of the house concerned and his sister lived in the street, and a second because he had a relative amongst the objectors.

Declaration not needed

3. The Ombudsman considered complaints that four other members should have declared an interest. Three of those complaints were not upheld. One member had a child of nursery school age, but the child was already attending a maintained nursery and she did not intend to transfer the child to the private nursery; she was a ward member and supported the application; and the Ombudsman said that her involvement was not improper. Another member was also a member of the county council's education committee: he was well acquainted with the county council's policies and knew there was no proposal for local authority nursery provision in the town. In respect of the

third member, the allegation was that he had a close working relationship, friendship and shared professional interest with one of the members who had declared an interest, and because of that relationship should not take part in proceedings: he was not aware of the nature of the interest of that member, who had not spoken to him about it; and the Ombudsman found nothing to support the claim that he was improperly motivated to assist that member.

Declaration needed

4. In respect of the fourth member, the Ombudsman considered that she had a clear and substantial interest and should have declared it and taken no part in proceedings. In fact, she had a significant connection with both sides in the controversy. She was a former deputy head at the school previously attended by the planning applicants, the complainant's husband and a fellow objector.

5. The Ombudsman considered that the member would be unable to discharge her responsibilities as a member of the planning committee if she had to declare an interest every time an application was submitted by a former pupil. However, two of the former pupils in this case (one of the applicants and the complainant's husband) had been sixth formers in her 'A' level group, and teachers generally have a longer and closer relationship with such students than with most pupils. There were other factors which

were also relevant: the member had attended the wedding party of the applicants some years earlier and the member was a friend of the woman who founded the nursery, lived next door to it and still took an interest in it.

application was approved on the chairman's casting vote and if the member had declared an interest and not taken part, the application would not have been approved.

6. The participation of the member was particularly significant since the

(Report 94/C/4942)

J10: Neighbour notification

Need for reconsultation with a neighbour whose interests are materially affected by a proposed development

1. Mr Larch complained that there were failings in the way in which a council dealt with an application for open-cast mining. Part of the land involved abutted land on which Mr Larch had a number of sheds which were used for his mushroom growing business. The implications of the application were particularly important to him because mushroom growing is sensitive to airborne dust.
2. It was clear to the council that Mr Larch would be affected if permission were granted and works commenced. It notified him of the application and took his representations into account. The council adopted the objective of trying to mitigate the effects of development on the use of his land and accordingly determined that permission would only be granted if the applicant entered into a binding agreement to relocate the mushroom farm.
3. The applicant however decided that he did not wish to offer relocation but offered Mr Larch the installation of filtration instead. Mr Larch did not consider that a satisfactory alternative.
4. The applicant put a revised application to the council, with proposals for filtration rather than relocation. The proposal was put to the relevant committee and accepted by members, who varied their earlier resolution. All this took place at great haste and unknown to Mr Larch, who found that the council had now conceded an option that he did not want.
5. The Ombudsman said that in view of its previously agreed objective, the council should have notified Mr Larch about the revised proposal. That would have given him the opportunity to make objections which in turn would have enabled members to assess the degree to which the filtration proposal was an acceptable alternative to relocation. The failure to consult Mr Larch and give him an opportunity to make further representations was maladministration.
6. When the matter came to the committee, members gained the impression that Mr Larch was content to accept the filtration option in principle, but this was not the case.

Members made their decision to accept the filtration option in the absence of all relevant information and that too amounted to maladministration.

7. The Ombudsman considered that had Mr Larch been able to object, the council would have asked the applicant to achieve relocation before works commenced, or, at the very least, to modify the filtration proposals to take full account of Mr Larch's concerns. The majority of members interviewed had made it clear that they wanted Mr Larch's land use to be safeguarded and the Ombudsman concluded that the council's maladministration caused Mr Larch to lose the opportunity to continue running his business in the way that he wished either on a new site, or adequately protected at the existing site. The Ombudsman commented:

"Mr Larch has suffered considerable injustice as a result of the council's maladministration. He accepted that the council was seeking to safeguard his use of neighbouring land from the ill effects

of development, but he was let down; negotiations which should have been in the open took place behind his back and to his detriment; the new development effectively made his business inoperable, at least for a time; he was forced to consider selling his business at a time and in circumstances that could only have been unfavourable to him; and he had to live with the very great worry, stress and trouble this must have caused. He found his life and livelihood turned upside down, at least for a time, and that must have been a considerable trauma."

8. The Ombudsman recommended an *ex-gratia* payment of £15,000.

(Report 94/B/4608)

J11: Neighbour notification

The importance of operating adequate systems for notifying neighbours about proposed development

1. The complainants occupied an end-of-terrace house on a new housing estate. They alleged shortcomings in the handling of a planning application for seven homes, one flat and garages on land adjoining their home.

What happened

2. As a result of the planning permissions granted by the council, Mr and Mrs Wood felt that their privacy had been affected adversely because their house and garden were now overlooked from a first floor flat built on top of the garage block, and that their garden suffered a loss of sunlight.
3. When they bought their home they knew that a three-storey block of flats would be built behind their property but the plans showed only landing and staircase windows in the nearest elevation. The council then approved a detailed planning application from the developer proposing a revised layout for the part of the housing estate behind the complainants' home. It involved substituting the three-storey block of flats with conventional semi-detached houses and the construction of a terrace of two houses and one one-bedroomed flat built over a block of three garages on land previously approved for use as a car park. Windows serving the garage flat's living room, toilet and bedroom overlooked the complainants' house (living room and first floor bedroom and garden).
4. It was the council's policy to publish a weekly list of new planning applications. In addition, a site notice was displayed on or near each application site in a conspicuous position available to the public for a period of 14 days. The case planning

officer was normally expected to inspect an application site within 14 days of the receipt of the planning application and to ensure that the site notice had been displayed. If the notice was not found on site, or was inappropriately sited, the case planning officer should display another site notice for a further 14 days. The council notified neighbours direct only when the case planning officer considered that to be appropriate.

5. The complainants considered that they should have been notified direct of the planning application for the revised estate layout; that erecting only one application site notice was inadequate and that it was displayed in an entirely unsuitable location; and that the council should, at a minimum, have erected a second site notice on the vacant land immediately behind their home.

Advertising planning applications

6. The Ombudsman said that the council's action in posting only one site notice at the location concerned was reasonable. But no one could be reasonably confident as to how long the notice was in position. No officers visited the site during the 21-day period for the receipt of comments and the case officer's site inspection took place one week after the expiry of the advertisement period contrary to the council's procedure which required a visit within 14 days. He did not check, with the building worker he said he met on site, on the precise location of the site notice or how long it had been in position. The Ombudsman said the officer should have checked with the adjoining residents that the site notice had been displayed for sufficient time. It was in fact missing

when another officer went to take it down after the 21-day period.

7. The Ombudsman urged the council to review its notification system and to consider, in the absence of any routine notification policy, more effective arrangements for ensuring that site notices remained on proper display for an adequate time.

8. The Ombudsman continued:

“I have considered most carefully whether the complainants should have been notified direct of the planning application I note that the habitable rooms concerned are only about 10½ metres apart and all the habitable rooms in the garage flat are at first floor level. The notes of the site visit made by officer B ... were inadequate and indicate to me that he did not properly consider the effects of the planning application on neighbouring properties. In my view, taking all the relevant evidence into account, the planning officer concerned did not pay sufficient attention to the closeness of the proposed garage flat and the degree of overlooking of the complainants’ habitable rooms and garden. In the circumstances the decision not to notify Mr and Mrs Wood direct constitutes maladministration.”

Consequences of the maladministration

9. If the complainants had been aware of the details of the original planning application, the Ombudsman had no doubt that they would have lodged an objection. The available evidence indicated that the complainants’ objection would have led the council to explore with the developer the

scope for reducing or avoiding the overlooking of the complainants’ home. On the balance of probabilities, the Ombudsman believed that the council’s negotiations with the developer would have resulted, at least, in the council granting planning consent for the garage flat block in a location approximately 1½ metres further north, and with a smaller living room window (60 cm wide) in the northern elevation overlooking the complainants’ home and that this development would have been implemented.

Remedy

10. The Ombudsman recommended the council to make an *ex-gratia* payment of £250 to the complainants to compensate them for the distress and anxiety caused by the greater overlooking and in recognition of their time and trouble in pursuing their complaint. As the greater overlooking might also have resulted in an additional injustice by reducing the value of the complainants’ home, he also recommended that the council should commission an independent valuer to determine whether the garage flat block as built had caused any loss in value of Mr and Mrs Woods’ home when compared with the impact of the development described in paragraph 9; and the council should by way of compensation pay any loss in value which might be determined.

(Report 93/B/1875)

J12: Neighbour notification

The need for re-notification of neighbours following an amendment to a planning application – the need for the consultation to be in writing

1. The application was for an extension to a nursing home. A site notice was published and objections were received from the complainants and others. One of the important planning considerations was the impact on the amenities of nearby residents, particularly the complainants (Mr and Mrs Gardener). The case officer initially recommended refusal of permission on the grounds of loss of amenity to adjoining properties.
2. The developer was prepared to make amendments to the plans and the case officer had a meeting with the architect on site. At the conclusion of the meeting, the case officer spoke to the complainants on site and explained what revisions were being proposed.
3. The Ombudsman did not consider that the amended plans could reasonably be considered as only a minor change.

He commented:

"I cannot accept that a brief conversation amounts to reasonable consultation, especially as officer A could not be sure what the amended plans would show. Indeed, the first amended plans received did not accord with officer A's understanding of what had been agreed orally. There is a conflict of evidence as to what Mr Gardener said or indicated to officer A at the site meeting, but I do not consider that because Mr Gardener might have 'nodded in the right places' as officer A recalls, there was justification for believing his objection to the extension had been withdrawn. I accept Mr Gardener's view that he needed to examine plans of the proposed development in order to give a considered response to the proposal. I consider that given the circumstances of this case, the failure to consult Mr and Mrs Gardener in writing was maladministration."

(Report 95/B/1006)