

Final Decision

Complaint ref: 10 011 590
Council: Ipswich Borough Council
Date: 24 October 2011

The Complaint

1. This complaint initially concerned the actions of a councillor and the subsequent decision of the Council's standards committee, but the complainants later indicated what they wished to pursue was a catalogue of errors by the Council in granting planning permission for a telecommunications mast. In particular they are aggrieved that:
 - a site notice giving publicity to the planning application was incorrectly worded;
 - the application said that the mast would be located on land owned by a local sports club, but it would actually have been located on land Network Rail's land;
 - During the consideration of the planning application, a planning officer proposed a change to the mast's design which was not publicised by the Council or made known to members of the planning committee prior to the committee meeting. The Council did not publicise the change on its website until the matter was raised by the complainants;
 - the decision notice incorrectly referred to the development being carried out in accordance with plans received on 1 November 2008;
 - the Council did not inform local residents of an application to relocate the mast after the planning application had been approved;
 - there are many instances of service failure, poor communication, poor record keeping, and lack of transparency and openness by the Council since the residents complained about the planning decision;
 - the choice of site for the mast has led to anti social behaviour problems;
 - the Ombudsman was misled by the comments of a council officer who said the mast would not appear prominent from dwellings. They say that there is considerable visual intrusion for over 30 dwellings.

The role of the Ombudsman

2. The Ombudsman's role is to consider complaints of service failure and maladministration causing injustice. The Ombudsman must consider whether the Council has acted reasonably in accordance with the law, its own policies and generally accepted standards of local administration. Where a council has acted with maladministration, the Ombudsman considers whether injustice has arisen and, if she considers this significant, an appropriate remedy for that injustice.
3. The Ombudsman does not have the power to question decisions or actions which have been properly taken even though people may disagree with them. This means that she looks at the way in which planning decisions are taken, but she may not criticise the decisions themselves unless they are based on faulty decision making.

4. The Ombudsman has the power to start, continue, and discontinue an investigation. We are publicly funded to provide a service without charge to those who have suffered an injustice as a result of a council acting with maladministration or failing in its provision of a service. The Ombudsman must use the resources available to her as effectively as possible. This means that we will not start or continue an investigation once we are satisfied it is unlikely that we would find maladministration, or the actions complained about have not caused an injustice.

Investigation

5. As part of the investigation, I have:
 - considered the complaint and the copy correspondence sent to the Ombudsman
 - considered the papers on an earlier complaint about the grant of planning permission and the publicity given to that planning application
 - visited the site of the telecoms mast and met the complainants and their MP and discussed their concerns with them.

Consideration

6. I shall address each of the complainants' concerns in turn.

A notice to the public on the application site was incorrectly worded

7. As part of wider publicity, a site notice was posted on the planning application site. The notice described the development as a 20m high telecommunications mast and associated works, gave details of where plans could be inspected and invited comments. It said the application was to determine whether prior approval of the Council was required for the siting or appearance of the development, but that "the works themselves constitute 'permitted development' not requiring formal planning permission".
8. This was incorrect. There is a modified system of planning control for telecommunications masts for mobile phone operators which makes them 'permitted development' (and so not requiring planning permission from the council) if their height, excluding any antenna, does not exceed 15m above ground level. In these circumstances, control by the Council is restricted to 'prior approval' of whether their siting and appearance are acceptable.
9. Phone masts and associated equipment more than 15m high require full planning permission. The mast in question was 20m high and so required full planning permission. All the parties recognise that the wording of the site notice was incorrect.
10. The Council was at fault in wrongly describing the proposal. I must consider, however, whether this caused injustice to the complainants.
11. The notice clearly stated that comments would be considered by the Council. Residents have previously complained that they could not see the notice. I have seen no evidence that they were deterred from commenting by the incorrect wording.

The application said that the mast would be located on land owned by a local sports club, but it would actually have been located on land Network Rail's land

12. A local planning authority must not consider an application for planning permission without the relevant land ownership certificate. The certificate confirms the applicant is the owner of the land or has served notice on the owner of the land or has tried to

ascertain the ownership of the land. In this way, planning applications cannot normally be made without the landowner being aware of the proposal.

13. Here, the original planning application stated that the mast would be on land owned by a local sports club, but part of the site was owned by Network Rail's which was not notified. The complainants say that they suspect the Council knew part of the site was not owned by the sports club, but the Council denies this.
14. I have not seen any evidence that this matter was brought to the Council's attention when the application was under consideration, and councils do not routinely keep land ownership information. Unless challenged, Councils are entitled to take ownership certificates at face value. I have seen nothing which leads me to conclude the Council was at fault here, or that there was injustice to the complainants who have not claimed to be affected landowners.

During the consideration of the planning application, a planning officer proposed a change to the mast's design which was not publicised by the Council or made known to members of the planning committee prior to the committee meeting. The Council did not publicise the change on its website until the matter was raised by the complainants

15. In order to minimise visual intrusion from masts and sites, government guidance attaches considerable importance to minimising the number of sites and encourages mast and site sharing. A council must have material planning reasons for departing from such guidance. The planning application had originally proposed a monopole mast, which would not normally have been suitable for mast sharing. The planning officer asked the applicant whether consideration had been given to a lattice mast (a type of pylon structure which would enable mast sharing). I do not consider that this was fault: the query reflects government advice.
16. The report to the committee described the proposal as the installation of a 20 metre high monopole. But it said officers had suggested a change to a lattice design and, provided agreement could be reached on the most suitable site and type of mast, the proposals would be acceptable. On 21 November, five days before the matter was considered by the committee, the Council says the applicants amended their proposals to a lattice mast. The Council says the revised drawings were seen and considered by the committee.
17. The complainants say that councillors were not told of the change to a lattice mast, and point out that three members of the committee, including the chairman, say that they were not provided with evidence that the monopole had been changed to a lattice before they deliberated upon the application. The Council is clear, however, that it was the revised proposals which were considered. I do not see that I can demonstrate which is correct, but in view of the clear reference in the committee report to further details being required for the scheme to be acceptable, I have concluded that these were received as the Council states and that it was the lattice mast which was considered and approved. The alternative, that the monopole was considered and approved without further details, seems unlikely in view of the potentially contentious nature of telecommunications development. I am, however, concerned that the records of the meeting do not clearly show what was considered: this is fault by the Council.
18. As to whether the change to a lattice mast should have been publicised by the Council, there is no legal requirement to publicise changes to planning applications. I consider that councils should do so, however, if the changes might have a significant adverse impact on objectors or others. Here there were no objectors at the time and the site is

about 50m from the nearest house, on the far side of a railway embankment. While the mast is clearly visible above the embankment, in I do not consider the Council's decision not to re-publicise was fault.

19. A further cause of grievance lies with the late provision of the drawings showing the change of the design of the mast from monopole to lattice on the Council's website: I understand that for two years the revised drawings were missing from the Council's website. This led the complainants to believe the change in the design of the mast had not been considered at the planning committee, but much later and by officers only.
20. Clearly two years is far too long for the Council to have put things right. I can see no reason why the documents could not have been available on its website much earlier. I do not consider, however that any substantive injustice arose.

The decision notice incorrectly referred to the development being carried out in accordance with plans received on 1 November 2008

21. The decision notice has the wrong date for the receipt of drawings. It refers to drawings received on 1 November when the drawings were received on 21 November. This is clearly fault, but appears to have been a simple typographical error: the decision notice gives the correct reference numbers for the submitted plans, showing a lattice mast, and I do not consider any injustice arises.

The Council did not inform local residents of an application to relocate the mast after the planning application had been approved

22. In February 2010, some time after planning permission had been granted, the operator proposed relocating the mast "to insure (sic) the application site outlined in red is wholly on land owned by the sports club. Previous location of site marked on new planning drawings." This meant moving the mast 4.5m into the site, away from the railway embankment. The size, height and design of the proposal remained unchanged.
23. The Council dealt with the matter administratively as a non-material amendment to the approved scheme. I have considered whether the Council was at fault here in view of the partial change in the application site and location of the mast, and whether there should have been publicity. I have concluded, however, that while (because they are often controversial and the Council by this time was aware of concerns) it might have been prudent to go through the procedure for a planning application, this was a matter for the Council to decide. The site moved slightly further from the closest houses and the issue with the ownership certificate does not appear to have disadvantaged anyone. There was no legal requirement for publicity.

There are many instances of service failure, poor communication, poor record keeping, and lack of transparency and openness by the Council since the residents complained about the planning decision.

24. In addition to their concerns about the decisions made by the Council, the complainants are aggrieved about the way in which the Council dealt with the queries they had and complaints they made.
25. The grievances include the Council's failure to process a complaint they made in August 2010; a delay in providing information they requested (beyond the Council's published time frame of 20 days); that information on the Council's website relating to the mast applications was incomplete and inaccurate; and a failure to investigate their concerns, identify mistakes and take responsibility for mistakes.

26. I do not consider these ancillary matters, in themselves, warrant an investigation by the Ombudsman. I acknowledge that the complainants were frustrated by the actions of the Council, but I do not consider that the complainants were caused a significant injustice.

The choice of site for the mast has led to anti social behaviour problems

27. The choice of site for the mast was a decision for the operator.

28. I understand that the site is used as a rallying point by youths, but that does not mean the decision to approve the installation of a mast at this particular site was unreasonable. I see no reason why the Council should have anticipated anti social behaviour at the time the application was determined. I do not consider the Council has been at fault here.

The Ombudsman was misled by the comments of a council officer who stated that the mast would not be prominent from dwellings. They say that there is considerable visual intrusion for over 30 dwellings

29. I do not consider that this service was misled by the comments of the council officer who stated in a response to the complainants' concerns that the mast would not be prominent. The officer expressed an opinion. Whether I share that opinion is not material to whether the Council has been at fault. I viewed the mast from the property of one of the complainants and I could see the mast clearly.

Decision

30. My decision is that the Ombudsman should not pursue this complaint further.

31. It is clear that the Council has not handled some parts of this matter well. This investigation has identified maladministration in the following:

- The incorrect wording of the site notice
- Incomplete record keeping by the Council. Late changes to proposals under consideration by committees, and new information, should be noted in the minutes
- A delay in posting application documents on the Council's website
- The incorrect reference to the date of receipt of drawings on the decision notice. Care should be taken to ensure decision notices record accurately the matters referred to

But I do not consider that substantive injustice to the complainants has arisen in consequence.

32. I recommend the Council reviews its administrative procedures to ensure that the faults I have identified here do not arise in future.

Felix Di Netimah
On behalf of the Local Government Ombudsman