

Report

on an Investigation into
Complaint No 08 002 912 against the
London Borough of Tower Hamlets

6 August 2009

Investigation into Complaint No 08 002 912 Against the London Borough of Tower Hamlets

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Key to names used

Mr and Mrs Page	The Complainants
Officer A	An enforcement officer employed by the Council

Report Summary

Subject

Mr and Mrs Page (not their real names for legal reasons) complain that the London Borough of Tower Hamlets did not advertise a planning application it had received for development at a property next to their home, denying them the opportunity to object to the works. They further complain that the Council did not consider the application properly and granted consent for it even though it contravened its adopted policy.

Mr and Mrs Page suffered injustice through loss of amenity by overlooking and in the loss of value to their home.

Finding

Maladministration causing injustice.

Recommended remedy

The Local Government Ombudsman recommends that the Council pays the following compensation to the complainants in recognition of the injustice suffered.

A payment to reflect the disappointment felt by the complainants that their amenity had not been properly considered by the Council and to assist them in taking any measures they feel necessary to mitigate their loss of amenity	£1000
Time and trouble	£300
Loss of value of the complainants' property	to be determined by comparing the value of their property now with that if consent had been allowed for a balcony which did not allow overlooking of their living accommodation

In addition the Ombudsman recommends the Council takes the following steps to avoid further incidents:

- The council ensure that it has procedures which require the findings of a case officer's site visit to be fully recorded
- That the Case Officer's report on an application accurately describes the planning history of the site, the policies relevant to the application and the material planning matters which were considered in reaching the Officer's recommendation and the planning decision.

Introduction

1. Mr and Mrs Page live at 24 River Street in the London Borough of Tower Hamlets. Their home is a converted warehouse overlooking the River Thames. The living area of the property is open plan, and extends to the full width of the flat.
2. A planning application was made for the erection of two balconies on the river-front elevation of buildings next to their home. Mr and Mrs Page complain that they were not notified about this planning application and did not find out about it until work had started on the balconies. They say that if they had been notified when the planning application was under consideration by the Council they would have objected to it.
3. Mr and Mrs Page believe that the Council did not consider properly the loss of amenity they would suffer by having their living room overlooked by their neighbours standing on the new balcony. They believe that if the Council had properly considered how they would be overlooked, planning consent would not have been granted for the erection of the balconies as submitted.
4. For legal reasons¹ the names used in this report are not the names (apart from that of the authority concerned) of the people and places involved.

Legal and Administrative Background

5. In order that interested parties have an opportunity to comment on planning proposals, councils are required to publicise the applications they receive. In the case of minor developments the local planning authority has a duty to give publicity either by posting a site notice or by serving notice on adjoining owners or occupiers.
6. The Council's notification policy is that generally all neighbours who are considered to be immediately affected by a proposal are notified of an application by letter.
7. The law² requires councils to determine planning applications in accordance with the Local Development Plan unless the weight of other considerations tells against it. In addition to its planning policies, therefore, a council must take into account other material planning considerations before reaching a decision, including the impact on the amenity of neighbouring properties and objections by members of the public. Councils are required to reach a decision about planning applications on the balance of all these factors.

¹ Local Government Act 1974, Section 30(3)

² Town and Country Planning (General Development Procedure) Order 1995.

8. The Council's policy relevant to the complaint is Policy DEV2 of the adopted Unitary Development Plan (1998). This states:

All development should seek to ensure that adjoining buildings are not adversely affected by loss of privacy, or a material deterioration of their daylighting and sunlighting conditions.

Investigation

9. A planning application was made on the 20 July 2005 for work to be carried out at Flats 2A and 3A, 18-22 River Street, London. These properties are two converted warehouses, separated by an atrium. The work was described on the application form as
- level 2: erection of balcony
 - level 3: erection of balcony and wintergarden
 - roof level: erection of movable sunshading screens.
10. The application was accompanied by an Ordnance Survey plan showing the properties 18-22 River Street surrounded by a thick black line.
11. The Council received the application on 21 July 2005 and completed what it refers to as a 'Reception Worksheet'. The location of the works was entered on the sheet as, 'Flat 3A, 18 River Street', and not 'Flats 2A and 3A, 18-22 River Street', as stated on the application form. The 'Validating Officers Site Map', filed with the papers, correctly shows the properties at 18-22 River Street edged in black.
12. My investigator, when he inspected the Council's files, found that once the application had been registered, every document created by the Council relating to the application showed the address incorrectly as 'Flat 3A, 18 River Street'.



13. The Case Officer wrote to the applicant's agent on 25 July 2005 asking for confirmation that the description of the proposed works was correct. The Agent replied on 1 August, confirming that the description of the works was correct. The Agent's letter was headed, in a bold typeface, 'Flat 3A, 18-22 River Street'.
14. The drawings submitted by the applicant clearly show that balconies were to be erected on 18 and 22 River Street. The elevation drawings show that the proposed balcony at 22 River Street was to be immediately adjacent to a window in the riverside elevation of 24 River Street, the home of the complainants.
15. The Council says that neighbours were notified about the planning application by post. The notification letter refers to development at Flat 3A, 18 River Street, not Flats 2A and 3A, 18-22 River Street', the actual location of the works.
16. The Council has provided a list of the properties it says were notified about the proposals. The Council has also confirmed that, in accordance with its normal notification procedure, a site notice was not displayed at, or near, the development.
17. The complainants say they received no notification of any works, either to 18 or 22 River Street. They have produced affidavits from the owners of twelve properties in River Street which were included in the Council's list of notified properties. Each of the statements affirms that no neighbour notification letter was received by the occupier of the property.
18. Even if neighbours had received notification letters, these would have given the wrong location for the development – Flat 3A, 18 River Street. Mr and Mrs Page live at 24 River Street and so are separated from the property at 18 River Street by the atrium and the property at 22 River Street. So, if they had received notification of the development as described by the Council, they would have believed the development was some 20 metres from their home and so would not have been concerned at being overlooked from a balcony.
19. There was one objection to the proposal and that was from a resident to the rear of, and some distance from, the development. His representation refers to development at '18 River Street'.
20. Internal consultation letters were sent to the Council's Environmental Health Department, and the Conservation and Urban Design Team. All consultation letters and responses referred to development at 'Flat 3A, 18 River Street', and not 'Flats 2A and 3A, 18-22 River Street'.
21. A 'Fast Track Report' was prepared by the Case Officer. In the report, the site is referred to as 'Flat 3A, 18 River Street'. The report contains a pre-printed line saying, "The application is acceptable in amenity terms because", followed by a hand written note, "other apartments have balconies / privacy as existing".
22. The report has a pre-printed heading, Recommendation: Approve/Refuse. Neither is marked.

23. The report records that one objection had been received.
24. The scheme was approved under delegated powers and a decision notice was issued on 12 September 2005 granting consent for development at 'Flat 3A, 18 River Street', and not 'Flats 2A and 3A, 18-22 River Street' as on the application.
25. Work on the balconies did not commence until 2008. The complainants say the first they knew about the proposals was when they returned from holiday in February 2008 and found work in progress at 22 River Street. They discovered a balcony was under construction approximately one metre from their living room window. They realised that anyone standing on the balcony would have an uninterrupted view across the whole of the living area of their home.
26. They asked the Council if consent had been obtained for the work and initially were told that no approval had been granted for 22 River Street. Subsequently the Council confirmed that consent had been granted for the work at 22 River Street in September 2005.



27. Mr and Mrs Page complained again when the balconies were completed. Officer A, from the Enforcement Team, visited the property in July 2008. At the time he inspected the property he was under the impression that no consent existed for the balcony that had been built. His written report on his visit states, "Having looked at the balcony (and not knowing the planning history) there did appear to be an overlooking issue if people stood right at the end of the balcony and if they turned around as they could then see into the lounge of 24 River Street."
28. On 21 July, Officer A confirmed that the Council could take no enforcement action with regard to the balconies as they had been built in accordance with the drawings approved by the consent granted in September 2005.
29. In November 2005, the Council considered an application for the erection of balconies at 26 River Street. This is the property on the other side of the complainants' home. These proposed balconies were further from the windows of Mr and Mrs Page's property than those which had been approved at 22 River Street.
30. The Council refused this application. The reason given for the refusal was as follows:

The proposed enlarged balconies would enable overlooking of the neighbouring properties Nos 24 and 28 River Street, resulting in a loss of privacy to the occupiers thereof. As such, the proposal is contrary to Policy DEV2 of the adopted London Borough of Tower Hamlets Unitary Development Plan (1998).
31. An amended application was submitted and approved in August 2006. The Case Officer's report on this amended scheme says that the proposals overcame the previous reasons for refusal because an obscure glazed screen had been introduced between 24 and 26 River Street, preventing direct views into the windows on the riverside elevation of number 24 River Street.

The Council's view

32. The Council accepts that the wrong address details were published in the notification letters sent to neighbours and that no details of a site visit were recorded. It remains of the view that the balcony does not cause an unacceptable level of overlooking. It believes that even if the complainants had been properly consulted and been able to make representations to the Council that the decision by the planning officer may have been the same. It says that there is no right to privacy or to a view

Conclusion

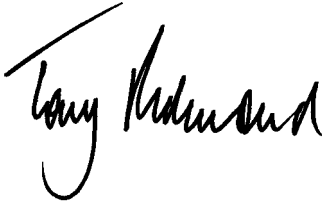
33. It appears that the Council made a mistake at the outset by registering the application as development at 18 River Street instead of 18-22 River Street as set out in the application and shown on the submitted drawings. All subsequent documentation, including internal and external consultation referred to this incorrect address.
34. The Council says that it sent out letters notifying neighbours that it was considering an application for development at 18 River Street. Twelve neighbours who should have received these notification letters have said they were not received. I cannot be sure if the Council sent out these notification letters or whether they may have been mislaid in the post. But even if the letters were sent and had been received by neighbours, the notification was for the wrong address, and so neighbours could not have come to a proper judgement of how what was proposed may affect them.
35. The Council says that an officer carried out a site inspection. It is not possible to view the southern elevation containing the proposed balconies except from a boat or from the opposite side of the river because the development has a river frontage and there is no riverside footpath. There is no record on the planning file that any visit took place and the Council has produced no evidence to support its assertion that a visit was made. An inspection could have taken place from the windows of 18 or 22 River Street, but there is no record that the Case Officer made an appointment with the occupiers of either of these flats to carry out an inspection from inside the properties.
36. I am satisfied that either no site visit was made, or the site visit failed to identify the proximity of the complainants' living room window to the proposed balcony.
37. I consider the Case Officer's report to be inadequate. It is my view that a case officer's report on an application which is to be considered under delegated authority should essentially be an abbreviated version of the report which would be put to a planning committee. It should contain as a minimum a description of the proposed development, a planning history of the site and a note of policies which are particularly relevant to the application under consideration. It should set out the material planning matters relevant to the application and the case officer's assessment of the proposals and recommendation. The report on this application did not contain this essential information.
38. I do not believe that a proper assessment of the loss of amenity by overlooking was carried out by the Case Officer. Because the development was wrongly registered as work to be carried out at 18 River Street, I cannot be sure that the Case Officer considered the proximity of the balconies on 22 River Street to the windows of the complainants' property at 24 River Street.

39. The Council says that it believes the new balcony at 22 River Street does not result in an unacceptable level of overlooking in “planning terms” and it says that a neighbour has no right to privacy or a view. I do not accept that a neighbour has no right to privacy. The Council refused a similar application for balconies at 26 River Street for that very reason – it contravened its policy DEV2, causing loss of privacy to the neighbouring property. Consent for the balcony on this property was only allowed once an opaque screen was incorporated into the design to protect the neighbours’ privacy.
40. I accept that this would not have been a satisfactory measure in this case as such a screen would have interfered with the complainants’ river views. But a possible solution was available. The Council could have negotiated with the applicant to shorten the proposed balcony so that its end was further from the complainants’ window. This would have allowed the applicant the amenity afforded by the balcony while protecting the privacy of the complainants.
41. I consider that these failings on the part of the Council amount to maladministration. Mr and Mrs Page suffered injustice through loss of amenity through overlooking, the loss of value of their property and the time and trouble they were put to in making their complaint to the Council and to me. To remedy that injustice the Council should compensate the complainants as follows:

A payment to reflect the disappointment felt by the complainants that their amenity had not been properly considered by the Council and to assist them in taking any measures they feel necessary to mitigate their loss of amenity	£1000
Time and trouble	£300
Loss of value of the complainants’ property	to be determined by comparing the value of their property now with that if consent had been allowed for a balcony which did not allow overlooking of their living accommodation

42. I note that the Council now uses a more comprehensive template when considering minor planning applications. Whilst I welcome this change I have seen no evidence that the current template provides sufficient information to allow officers with delegated authority to come to robust planning decisions.

43. The Council should therefore review its procedures with a view to ensuring that:
- a. evidence of site visits are saved on its files, either in the form of photographs or notes; and
 - b. The Case Officer's Report contains, as a minimum, a full description of the proposed development, the planning history of the site, the policies against which the development is to be considered, the assessment of material planning matters and the officer's recommendation.



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