

# Report by the Local Government Ombudsman

**Investigation into complaints against**

**Plymouth City Council**

**(reference numbers: 15 015 955 and 15 015 963)**

**1 September 2016**

## The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

# Investigation into complaints number 15 015 955 and 15 015 963 against Plymouth City Council

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

## Key to names used

Mr and Mrs B – the complainants in one household

Ms C – the complainant in another household

D Street – the street where the complainants live

X Consultants – drainage engineers under contract to the Council

Abc – the first planning application and permission for the site

Xyz – the second planning application and permission for the site

## Report summary

### Planning and Development

Mr and Mrs B and Ms C complain the Council, by not telling them about a major planning application which affected their homes, denied them the opportunity to have their objections and their amenity considered; and by retrospectively changing plans on the decision notice, denied them the opportunity to apply for judicial review.

The investigation found the Council did not publicise the planning application properly; it was unclear about the site boundary; it did not give proper consideration to the complainants' amenity; it did not consider the drainage arrangements properly and it listed the wrong plans in the decision notice.

### Finding

Fault found causing injustice and recommendations made

### Recommendations

The Council should, within the next three months;

- ask the District Valuer to assess the current value of the complainants' two properties and the value that would have been attributed to each of the properties in the event that the development had been constructed in accordance with the plans previously agreed (*Abc*). The Council should pay Mr and Mrs B the difference between the two valuations on their property and it should pay Ms C the difference between the two valuations on hers. Unless the Council has a legally binding arrangement in place for the developer to replace the Devon hedgebank, the current valuations should make no assumptions about its ability to provide screening;
- pursue the proposals in its drainage report. If the soakaways are deficient and it is not able to take appropriate remedial action against the developer, it should remedy the deficiencies so far as are necessary to protect the complainants' properties and this work should be complete before the onset of winter. Engineers commissioned by the Council have said how, as a last resort, a drain could be laid along the footpath on land the Council owns;
- apologise to each family and pay each £500 in recognition of the time and trouble to which they have been put, the frustration they have experienced and their consequent loss of confidence in the Council; and
- arrange for all Members of its planning committee to have at least one day's training from professionally qualified planning officers who are not employed by the Council. The purpose of the training should be to ensure Members are equipped and confident to challenge the view of planning officers prior to making decisions.

## Introduction

1. Mr and Mrs B and Ms C complain about the Council's decision to allow a developer to build houses so close to their homes. They say:
  - the Council did not tell them about the application;
  - the Council did not consider the impact of the development on their amenity;
  - the planning permission approved the wrong plans and, months later, retrospectively posted the correct plans on the decision notice on the website;
  - the Council did not give proper consideration to surface water draining from the site; and
  - the Council failed to consider the effect the development would have on a boundary hedge which would have provided effective screening.
2. Ms C says she no longer has any late afternoon sunshine in her kitchen, sitting room and dining room. She says a juliet balcony overlooks her garden and decking in the new garden affords an uninterrupted view into her bedroom. For Mr and Mrs B the separation distance is further but they too say they feel overlooked and, without screening their outlook is dominated by a two-storey house. Both complainants say their properties now flood. Mr B says the way the Council retrospectively changed the decision notice prevented him from challenging its decision through judicial review.

## Legal and administrative background

### The Ombudsman's role and powers

3. The Ombudsman investigates complaints about maladministration and service failure. In this report, we have used the word fault to refer to these.
4. The Ombudsman 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)*)
5. If there has been fault, we consider whether it has caused an injustice and if it has, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
6. For the purpose of an investigation we may require any member or officer of the Council to give information or produce documents. We have the same powers as the High Court in respect of the attendance and examination of witnesses and in respect of the production of documents. (*Local Government Act 1974, sections 29*)

### Publicity for applications

7. Councils must publicise applications for major developments (as was the case here) in the local press and tell neighbours either by site notice or letter (*Town and Country Planning*

*(Development Management Procedure)(England) Order 2010*). Government guidance throughout the relevant period said that sites “with more than one frontage will normally require more than one notice”. *(Circular 15/92, paragraph 10)*

8. In addition to the statutory consultation, the Council’s Statement of Community Involvement says it “strongly recommends” applicants for major developments consult with the public before putting in their application. The Statement says the Council expects these applicants to submit, along with their planning application, a statement outlining the community involvement they have undertaken “to enable the process and outcomes to be validated”.
9. Planning applications may be amended. The Council has discretion about whether and how to publicise amendments: it must consider their significance and whom they will affect. If it does publicise the amendment, it must make clear that this is an amendment to an existing application. If an amendment introduces a significant change, the Council should ask for a new application.
10. In October 2012 the Council changed its publicity arrangements so that where it had a choice between site notices or neighbour notification letters, it would generally favour site notices.

### **The Council’s duty to consult**

11. Applications for development of land of more than one hectare must be accompanied by a flood risk assessment.
12. Councils must also consult with the Environment Agency before they allow development on land of more than one hectare *(Town and Country Planning (General Development Procedure Order 1995, Article 10)*

### **Planning conditions**

13. The Council may only put a condition on a planning permission if the condition meets each of the following six tests. It must be:
  - necessary;
  - relevant to planning;
  - relevant to the development to be permitted;
  - enforceable;
  - precise; and
  - reasonable in all other respects.

### **The Council’s policy**

14. It is custom and practice, and in some cases policy, for councils to maintain minimum separation distances between residential properties to protect privacy and to ensure there is no unreasonable loss of light or harm to outlook. The Council’s Development

Guidelines say: “*Habitable room windows facing directly opposite one another should normally be a minimum of 21 metres apart for a two storey development. This distance should be increased to 28 metres when one or more of the buildings are 3 storeys in height*”. The minimum distance between a main habitable room window and a blank wall should normally be at least 12 metres. The distance should be increased for a three-storey development, normally to at least 15 metres.” It says “*balconies...should not be sited so that they impinge to an unacceptable extent on the privacy of neighbours’ gardens or habitable rooms*”.

## How we considered this complaint

15. This report has been produced following the examination of relevant files and documents, correspondence with the Environment Agency and interviews with the complainants and relevant employees of the Council. We have taken advice from an independent planning consultant.
16. The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

## Investigation

17. In 2012 a developer applied for planning permission for a number of houses on an uncultivated field. To the south and west of the field are post-war houses. A traditional Devon hedgebank (two parallel rows of dry stone wall filled with soil and hedging) runs the length of the east side of the field and, on the other side of the Devon hedgebank, there is a public footpath about 2 to 3 metres wide which leads to an area of woodland to the north of the field. No-one knows who owns the footpath although it is believed half (the side with the Devon hedgebank) is owned by the Council and the residents on the other side own the other half. The complainants live on the other side of the footpath.
18. The proposal affected existing houses on the roads to the south, east and west and, despite its new policy to notify surrounding properties by site notice only, the Council notified all 23 affected households about the application by letter. Mr and Mrs B and Ms C were among those notified; they inspected the plans and wrote letters of objection to the Council. The Council received 97 representations from the public, all objecting to the development.
19. The application was considered by the Planning Committee who granted conditional approval. We refer to this as permission ‘*Abc*’.
20. The site then changed hands. A few months after the first approval another developer, who is referred to for the purpose of this report as ‘the developer’ applied to build the same number of houses on the same site. Although the two applications were similar, the mix of dwellings had changed, the garages were in different locations and the house designs were different. In so far as the complainants were concerned, the greatest changes were to the properties closest to their homes. Where permission *Abc* had single

storey garages closest to them, the new development proposed two-storey houses. Our investigation concerns how the Council dealt with this second application. We refer to it as application and permission 'Xyz.'

### **How the second planning application was publicised**

21. The developer did not undertake any pre-application consultation. Instead, in his Statement of Community Engagement published on the Council's website, the applicant says Council officers agreed, at a meeting with the developer, to dispense with this requirement because of the existing planning consent for the site.
22. Application Xyz was validated and the public notification began 10 days later. On this occasion none of the residents received a notification letter but the Council placed a notice in the press. It also says it posted site notices on the three adjacent streets to the west, south and east of the application site, including the street where the complainants live - 'D Street'.
23. The notice gave application Xyz a reference number. Although it was a full planning application the Council described it as a "*revision to a previous approved scheme*". It says it did this to be helpful.
24. The developer then filed amended plans and the Council told "*neighbours who had supplied valid e-mail addresses*" about those amendments.
25. The complainants say no notice was posted in D Street. They say if they had known about the application they would have objected. Mr B says by chance his wife heard a rumour about there being "*minor changes to the layout*" after the site changed hands and she wrote to the Council about this but her letter was uninformed because she had no official information about what was happening. The Council did not respond to Mrs B's letter.
26. Seven people wrote letters of objection in respect of application Xyz.
27. We interviewed the case officer who told us he had posted a notice on D Street but he had no photographic or other proof. We asked the Council what evidence it had that it had publicised the application there. The Council sent us:
  - an internal 'control sheet'. This is a sheet completed by the officer who validates the application. Its purpose is to show what notices *should be* posted and it shows a notice should have been posted in D Street. But it is not evidence a notice was actually posted there.
  - an internal 'plotting sheet'. Although the Council sent us this as evidence of notices posted for application Xyz, it was obviously the plotting sheet for application *Abc*. It is not evidence a notice was posted for application Xyz.
  - the planning officer's record of his site visit in August 2013 which says '*site inspected, notices still on display around the site*'. But the planning officer's diary records he checked the notice on one road only and that was not D Street.

28. The Council says it told those “*for whom it had valid e-mail addresses*” about the amended plans and it says Mrs B would have been one of those told because it had her e-mail address. It sent us a pro forma of the letter it had sent out. The letter is dated. It advises recipients there have been amendments to the application and, if they want to comment, they have 14 days to do so. But the letter is dated eight days before the decision-making meeting. Later in our investigation the Council sent us another letter which it said it had written to Mrs B. This is dated the day before the previous letter. It says nothing about amendments but gives notice of the date of the committee meeting. Mrs B says she never received either letter.
29. The complainants sent us signed statements saying they could not have overlooked a site notice. Mr B says he walks into the village several times a week: he says he would certainly have seen a notice. Ms C says she takes her children to school each day and collects them. She says there is no way she would not have seen the notice.
30. Eleven residents, some of whom did not object to the development, have also written to us to say there was no site notice in D Street. A local councillor says he called on the residents when he learned about the second application because he knew it would affect them but unfortunately they were not at home. He says he “*does not recall seeing a notice posted*” in D Street.

### **How the Council considered the second application**

31. The development site is over a hectare. Where development is proposed on a site of one or more hectare, the developer must provide a flood risk assessment and the Council must consult the Environment Agency. The developer was not asked for a flood risk assessment. Nor did the Council consult the Environment Agency.
32. Because the site was surrounded by mature trees and protected species, the first applicant (of *Abc*) had commissioned a Tree Survey and an Ecology Report. The applicant for *Xyz* resubmitted these reports in support of his application. Both reports include the plans for *Abc*, not the plans for *Xyz*.
33. The Ecology Report discusses the Devon hedgebank bordering the footpath on the eastern boundary. It says this hedge is “*the only hedgerow within the site*”. It says the “*hedge consists of hazel with significant amounts of blackthorn*” and “*it is likely that this provides the best available nesting cover for birds*”. The report discusses how this “*hazel and blackthorn hedgerow forming the eastern site boundary*” should be retained and managed. It proposes “*hedge-laying to increase the biodiversity value of this feature for a range of flora and fauna*”.
34. The developer filed a Design and Access Statement too and this specifically referred to the plans for application *Xyz*. This Statement includes landscape plans which indicate the developer intended to retain the Devon hedgebank. But, whereas the Tree Survey and Ecology Reports show the Devon hedgebank as within the development site, the large scale plans in the Design and Access Statement show it as outside.

35. The development site is relatively level and the plans the Council accepted have the land levels marked on the site itself but there are no off-site levels marked. However, contour lines on the plans show the land falls away steeply to the east. The difference in height between the development site and the complainants' properties is significant. The Council-appointed drainage engineers say: *"The overall typical height difference between the development site and the back garden path level of (Mr B's property) is 3.0m"*.
36. The case officer evaluated the proposal and sent his report to the Planning Committee. The officer listed the reference numbers of the relevant plans at the back of his report. But the plans he listed were the plans the Council had approved with application *Abc*.
37. The officer's report must identify the material planning considerations and say how the proposal affects them. The officer said: *"The properties that are closest to the site... have 'back to back' relationships with the proposed dwellings adjacent to the east, south and west boundaries of the site. The separation distance between the existing dwellings referred to and the proposed dwellings is in excess of the 21 metres separation distance quoted in the Development Guidelines SPD as being the minimum acceptable distance. In fact most of the dwellings surrounding the site are a minimum of 24 metres from the closest point of the nearest proposed dwelling. The topography of the site, being fairly level, does not present any additional residential amenity issues"*.
38. The above quotation is the same wording that the officer had used in his report for application *Abc*. It does not accurately describe the proposals in application *Xyz* and significantly misrepresents them so far as the complainants' properties are concerned. On the two plots nearest their homes the houses had been moved, in the case of the house nearest Ms C by 10 metres, reducing the separation distance from 24 to around 13.5 metres. The relationship was no longer 'back to back' but 'back to side'.
39. The officer gave Members more information during the committee meeting. We have listened to the webcast. Describing the difference between the two applications (and indicating a house on the power-point presentation) the officer said *"the main change is the orientation of this dwelling..."* (referring to the house close to Mr and Mrs B). *"It faced North on the earlier application and now faces North West."* The officer did not tell Members about the house which had been moved 10 metres closer to Ms C. Describing the area round the site the officer told Members houses in another street were *"the closest dwellings to the site"*.
40. Indicating the footpath adjacent to the site the officer told Members *"the footpath will not be affected by the proposal"*. Later, responding to a Member's question about possible destruction of the Devon hedgebank during the course of the development, the officer did not indicate that trees would be felled to make way for building.
41. Reassured the plans were *"extremely similar"* to those already approved (permission *Abc*), Members agreed, by 7 votes to 5, to approve application *Xyz* subject to conditions and a section 106 agreement.
42. We asked the officer why he did not tell Members two houses had been moved. He said he *"did not consider the change significant"*.

## The planning permission

43. The application Xyz was allowed subject to conditions:
- condition 2 of the permission said “*The development hereby permitted shall be carried out in accordance with the following approved plans:*” and listed “*for the avoidance of doubt and in the interests of good planning*” the 13 approved plans. They were the plans for permission *Abc*.
  - condition 18 said the Council had to approve the surface water drainage arrangements. It did this some weeks later without any reference to the Environment Agency (which, had it been consulted on the application as it should have been, would have been re-consulted at this stage) and without having the basic information necessary to know how the site would drain.
  - conditions 21 and 22 provided for the retention of all trees and hedgerows on the site unless the local planning authority approved otherwise. Yet there were no longer any hedgerows on the site. The Devon hedgebank, inside the red line for *Abc*, was outside it for *Xyz*.

## What happened next

44. In January/February 2014 Mrs B, unaware of the new permission, saw workmen removing sections of the Devon hedgebank. Mrs B says she spoke to someone on the site who showed her the plans and assured her the hedge would be reinstated. Mrs B says these were A1 plans and she has no doubt they were plans for permission *Abc* because, if they had been the plans for *Xyz* it would have been obvious to them both there could be no room to reinstate the trees. Mrs B says the Devon hedgebank was interspersed with trees, some with girths of 12 to 18 inches. Although around six have been felled, she says their stumps can still be seen.
45. In April 2014 the developer discovered the plans the Council had approved were not the plans he had filed with his application. He told the planning officer. The planning officer issued a new decision with the correct plans for application *Xyz*. The new decision, when it was uploaded on to the Council’s website, was backdated several months to the date of the original permission. When asked later by his line manager to explain what he had done and why, the officer wrote:

*“When the decision notice was issued for some reason the approved plans condition contained reference to some of the plans approved in the former permission. This does not alter anything. When the application was advertised it referred to all of the plans submitted with the correct application and all of the plans published on the web etc was the correct info – during the consideration of the application only the correct plans were available to view and referred to and these were the plans referred to in the committee presentation. As soon as we realised that the DN contained ref to plans previously submitted we changed it to refer to just the plans submitted with the then correct application.*”

*“Re-issuing a DN due to minor immaterial administrative errors is something we have done historically where there is not a material difference to the approved application.”*

(‘DN’ in the quote above refers to the decision notice.)

46. In April 2014 Mrs B complained to the Council about the continuing destruction of the Devon hedgebank. She says it was the nesting season and she knew a robin had been nesting in the hedge. The Council’s arboricultural officers visited the site. These officers recall seeing the damaged hedge and seeing broken birds’ eggs on the ground. But they could not say if the eggs were from hatched chicks or nests which had been destroyed. The arboricultural officer says he assured Mrs B the hedge would be reinstated. He said this in good faith, his colleague having checked that this was a condition of the planning permission.
47. On 4 August 2014 Ms C awoke to find builders had begun to construct what could only be a house less than 14 metres from her bedroom window. Its foundations were level with the roof of her bungalow. She spoke to Mr and Mrs B who saw a building was also rising from the ground closer to their home than the permission of which they were aware had led them to expect. They complained to the Council. They said the developer was not building according to the approved plans.
48. Enforcement officers checked the plans against building on site. They told the complainants the developer was building according to his permission. But the officers were referring to permission *XYZ*. So far as the complainants were concerned, they only knew about permission *ABC*. Mr B believed there was something wrong. He complained to the developer. This is when he learned there had been a second application and the Council had approved another set of plans. Writing to Mr B on 11 September 2014, the developer said:
- “...there was an error concerning the approved drawing list on the decision notice issued with (the second ) Planning Consent ...The approved drawings from the previous (the first) planning permission were mistakenly copied across to the officer’s report / decision notice by someone at Plymouth City Council. This administrative error was rectified by PCC earlier this year after we pointed it out to them and the revised decision notice is attached with the correct drawings”.*
49. Mr B was incensed. He says the Council did not tell them about a second application, despite its impact on their amenity. Assurances he and his wife and Ms C had been given about reinstatement of the Devon hedgebank were false. The developer had removed the hedgerow from the wall, piling soil against the wall for his development. There was no room for the hedge and no possibility of it being replanted.
50. Mr B says if he had known sooner he would have taken advice about judicially reviewing the planning decision on grounds it was not publicised and harmed his amenity. Applications for judicial review must be filed as soon as possible and in any event not more than six weeks after the subject decision. By retrospectively backdating the plans

listed on the permission, Mr B said the Council had blocked that opportunity. Mr B complained to his ward councillors, he complained to his Member of Parliament (who asked us to investigate) and he complained to the police.

51. By the time Mr and Mrs B and Ms C came to us their concerns had escalated. They said, apart from the closeness of the new houses, the new houses were two storey whereas theirs were single storey and this difference was compounded by the fact the land level fell on their side by about 3 metres. They said around 60% of the Devon hedgebank had been lost and water was draining from the site, through the old wall, over the footpath and into Mr and Mrs B's property. Mr B had raised the step into his property by 6 inches to hold the water back but Mrs B says on wet days water now rises up through the ground which it had never done before.
52. Despite escalating their complaint through the Council's complaints procedure, the Council accepted only that it had got the decision notice wrong. But that, it said, had not caused the complainants any harm.

### **Our initial findings and the Council's response**

53. We found the Council's evidence that it had publicised application Xyz unconvincing. And irrespective of whether neighbours object or not, the Council has a duty to consider their amenity. The officer, in his report and in his presentation to Members, did not consider this. He did not explain accurately how the existing and proposed buildings would relate to one another. This was fault. We could not however be sure if, given the correct information Members would have approved the application. In other words we could not be sure of the complainants' injustice.
54. The Council was also at fault for not requiring a flood risk assessment and failing to consult with the Environment Agency about the drainage arrangements. But again the injustice was uncertain. We tried therefore to find out if the drainage arrangements, despite not having been approved by the Environment Agency, were nonetheless satisfactory. The plans showed that surface water falling on the roads would flow into the main drains. But water falling elsewhere (on the houses and surrounding hard standing) would drain to soakaways and the Council had no information about the adequacy of those soakaways. So we wrote to the Environment Agency to ask (a) would it have recommended approval of the application subject to the condition as worded and (b) would it have recommended discharge of the condition?
55. Meanwhile the Council contacted the Agency itself. The Council told us its senior planning officer had *"met with the EA's planning liaison officer on the 25<sup>th</sup> March 2015 and discussed the application. He has confirmed that the drainage solutions approved are appropriate and adequate to deal with surface water run-off at the site"*.
56. This conflicts with what the Environment Agency told us. It said:
  - if it had been consulted on the planning application, it would have recommended a more onerous wording for the surface water drainage condition than the one the Council included;

- no percolation tests or calculations were provided at the application stage and the soakaways were based on an assumed percolation rate. Without this assessment information, the system could not be justified. The design of the drainage scheme (ie the position / sizing and depth of the proposed soakaways) has to depend on appropriate percolation tests. By 'appropriate' the Environment Agency means in accordance with the relevant standards and at the correct location on the site. No percolation tests have been requested or supplied to the Council;
- off-site impacts on (the footpath) cannot be assessed because no ground levels were provided on the plans. Without details of off-site land levels, it is not possible to say if the soakaways will be deep enough. They must obviously be deeper than the level of the adjacent land;
- there were no additional measures proposed to manage overland flows in the areas of (the two plots next to the footpath).

57. The Council disputed our finding of fault. It asked us to consider more information, to interview the case officer and to discuss the complaint with its senior planning officer. We did all this. Our findings did not change. Nor did our uncertainty about injustice.
58. To help us decide if there was an injustice, we arranged through our Liaison Officer in the Council, to interview the Members to find out whether, with the correct information, they would have approved the application. Members could, we said, visit the site but they must not discuss any of the issues with one another or with officers.
59. We also asked the Council if it would appoint an independent drainage engineer.
60. Regrettably, having put preliminary arrangements in place for interviews with Members, the Council did not co-operate on the misunderstanding that we were acting outside of our jurisdiction. For the avoidance of doubt, this is addressed in paragraph 6 of this report.
61. The Council continued to dispute our finding of fault. Apart from accepting it had listed the wrong plans on the decision notice, it relied on The Development Management Procedure Order 2010, Regulation 4 which it says: 'clearly states the site notice need only be placed in at least one place on or near the site...multiple notices...are not required under the regulations', to explain why a site notice in D Street may not have been required. In all the circumstances of this case, we consider this falls short of what should have happened.
62. The Council challenged our criticism that the complainant's amenity was not considered. Our view is based on the report to Members which gives no evidence that amenity had been considered when it should have been.
63. The Council said the separation distances were within its guidelines. They were not. The Council's policy is for a "minimum distance" of "at least" 12 metres, taking account of site specific factors. Although separation here is 13.5 metres, there is a 3 metre drop in land levels, the properties are different heights and screening has been lost. None of this was considered. Nor was any thought given to the impact of the juliet balcony on Ms C's privacy.

64. The Council did however say it had commissioned a drainage report. We read it. The engineers were unable to locate soakaways on any of the public parts of the development site and could not gain access to private property to check (a) if any were there and (b) if they were the right capacity. But they noted the efficacy of any that were there would depend on the water table “*which would normally have been identified in the ground investigation that informed the design process*”. The engineers recommended a course of action. Further investigative work has been done since that report but the Environment Agency says there is not enough information yet to be satisfied the drainage is adequate.
65. Having been unable to conduct interviews with Members to ascertain the extent of the injustice caused, we proposed the Council appoint an independent planning consultant to give an objective view about whether, with proper consideration, the application would have been likely to have been recommended for approval. This proposal was refused.
66. We are issuing this report because the Council has disputed most of the faults we have identified. It has shown no regard for the harm it may have caused, nor any understanding of the principles of natural justice, in particular that it cannot be judge in its own cause. We have been unable to speak to Members as detailed in paragraph 60 of this report. But where we report that fault has caused injustice, officers must tell elected Members about our findings. (*Local Government Act 1974, sections 31*)
67. We have therefore taken the exceptional step of commissioning a report from an independent planning consultant ourselves. The planning consultant visited the site on 21 and 22 June 2016. During the summer equinox, he could assess possible overshadowing or loss of light. His report has been sent to the Council.
68. The planning consultant concluded the complainants’ amenity had been “*severely affected by the construction of the neighbouring building*” in terms of overbearing, overshadowing and (for Ms C) loss of privacy. The effect for Ms C is, in his view, greater than for Mr and Mrs B.

## Findings

### The publicity

69. The Council has a statutory duty to publicise planning applications. It should also do what it says it will do in its Statement of Community Involvement. Statutory notices need not give much information but the information they give must be accurate. For its own administrative purposes, it needs to have evidence it has discharged this duty.
- This was a full major planning application. The Council’s Statement of Community Engagement says it expects developers to carry out some public consultation on developments of this scale. Given the public interest in the first application, it was unfair and contrary to the spirit of the Council’s policy for it to dispense with this requirement.
  - The complainants and other residents say there was no site notice. Having read their correspondence, we are sure if they had seen a notice they would have acted on it.

The Council's officer and its records, by comparison, are unhelpful and unconvincing. We find it improbable the Council would have written to Mrs B on two consecutive days, telling her first the date of the committee meeting (but not about the amendments) and the next day telling her about the amendments (but not about the committee meeting.) And the 14 day response time in one of the letters expired after the Planning Committee had met and made its decision. The weight of evidence heavily favours the complainants' contention the Council did not put a site notice in D Street. This was fault.

- There is no such thing as a "revision" to a planning permission. The second application was a full planning application. Someone familiar with planning practice may have understood this from the reference code but the description, which should give the public a brief explanation, was misleading. Publicising a full planning application as a "revision" of an existing permission was fault.
- When minor amendments are received to an application under consideration, the Council has discretion about whether it needs to re-notify the public and how long it need give them to comment. It must exercise this discretion properly, taking proper account of material planning considerations such as the significance of the changes and those they might affect. There is no reason why people who have communicated by e-mail should be told about changes and those who have written letters should not. This arbitrary communication was fault. It was also fault to tell respondents they had 14 days to respond when the Committee meeting was eight days ahead.

### **Consideration of the application**

70. There were the following faults in validation and determination of the application.

- Validation of the second application without a flood risk assessment was fault.
- Failure to consult with the Environment Agency was fault.
- Documents filed with the application gave conflicting information about the eastern boundary of the site. As a result, the impact of the proposal on the retaining wall and Devon hedgebank and its impact on the public footpath, both material planning considerations, were not considered or explained to the decision-making body. This was fault.
- Failure to consider the impact of the development on the complainants' outlook, privacy and light was fault.
- Identifying the wrong plans in the officer's report and on the decision notice was fault.

### **Consideration of the conditions**

71. Generic conditions may be used providing they are amended as necessary. The Council was at fault for imposing a condition requiring the retention of hedgerows when there was no hedgerow on the site. The condition was neither necessary nor relevant to the development. This fault confused the Council's arboricultural officers who in turn inadvertently misled the complainants. It may also have misled Members into believing the Devon hedgebank along the public footpath would not be harmed.

72. The Council could not assess the developer's surface water drainage proposals without knowing the depth of the water table, the results of percolation tests and off-site land levels. For planning purposes it can now only enforce what it has approved. Discharge of the surface water drainage condition without essential information about whether the proposals would work was fault.

### **Consideration of the complaints**

73. The complainants say the Council would not address their complaints. It referred them back to the case officer and escalated enquiries responses to the Complainant's endorsed what the case officer said. The Council disputes this. It says a number of senior officers were involved. Apart from accepting the wrong plans were listed on the decision notice, none identified any of the other faults we have found.

74. It is regrettable that the investigation of these complaints has taken nearly three years. The Council's lack of cooperation and resistance to scrutiny has undoubtedly contributed to this.

### **Decision**

75. The faults more particularly set out in paragraphs 69 to 73 above resulted in significant harm to the complainants' amenity and to their properties. They have also wasted their time and caused them unnecessary frustration.

### **Recommendations**

76. The Council should, within the next three months:

- ask the District Valuer to assess the current value of the complainants' two properties and the value that would have been attributed to each of the properties in the event that the development had been constructed in accordance with the plans previously agreed (*Abc*). The Council should pay Mr and Mrs B the difference between the two valuations on their property and it should pay Ms C the difference between the two valuations on hers. Unless the Council has a legally binding agreement in place for the developer to replace the Devon hedgebank, the current valuations should make no assumptions about its ability to provide screening;
- pursue the proposals in its drainage report. If the soakaways are deficient and it is unable to take appropriate remedial action against the developer, it should remedy the deficiencies so far as are necessary to protect the complainants' properties and this work should be complete before the onset of winter. Engineers commissioned by the Council have said how, as a last resort, a drain could be laid along the footpath on land the Council owns;
- apologise to each family and pay each £500 in recognition of the time and trouble to which they have been put, the frustration they have experienced and their consequent loss of confidence in the Council; and

- arrange for all Members of its Planning Committee to have at least one day's training from professionally qualified planning officers who are not employed by the Council. The purpose of the training should be to ensure Members are equipped and confident to challenge the view of planning officers prior to making decisions.