



Leicester  
City Council

**WARDS AFFECTED**  
**All Wards**  
**(City Wide - Corporate Issue)**

**FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:**

**CABINET**  
**COUNCIL**

**7 March 2005**  
**31 March 2005**

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**FINDINGS OF MALADMINISTRATION**  
**BY THE LOCAL GOVERNMENT OMBUDSMAN**  
**(OMBUDSMAN REPORT 03/15807/15808/15809)**

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**Report of the Town Clerk and Director of Regeneration & Culture**

**1. Purpose of Report**

- 1.1 This report sets out the findings made by the Local Government Ombudsman (LGO) following the investigations into three complaints that the Council failed to protect the interest of existing residents when it agreed planning consent for a new development. This has resulted in considerable overlooking of existing properties
- 1.2 This report also sets out the remedies that the LGO recommends the Council to implement to provide just satisfaction to the complainants for the findings of maladministration leading to injustice and invites the Council to consider whether it accepts the recommendations.
- 1.3 In accordance with the LGO's practice the names of used within this report are not the real names of the individuals concerned for reasons of confidentiality.

**2. Summary**

- 2.1 Three couples complained that the Council failed to consider properly the effect of a proposed development on their amenity. The complainants allege, in particular, that the Council failed to seek information about proposed ground levels of the development site before determining the planning application and so the height of the new houses close to their homes is considerably higher than had been envisaged
- 2.2 The Ombudsman recommended:
  - (a) That the Council should commission an independent valuation of the complainants' properties to establish any loss of value which arises from the new properties having been built from 1m to 1.55m higher than would have been the case had the maladministration which he identifies not occurred.

- (b) That the Council should compensate the complainants for any loss that is identified.
- (c) That the Council should pay £250 to each complainant in acknowledgement of the time and trouble to which they have been put in pursuing their complaint.
- (d) That the Council review its procedures to ensure that, as far as possible, the maladministration does not recur.

### **3. Recommendations**

3.1 The Cabinet is asked to:

- (a) recommend that the Council accepts the Ombudsman's recommendations
- (b) subject to the Council's acceptance of this recommendation, the resulting executive action be taken.

3.2 The Council is asked to accept the Cabinet's recommendation.

### **4. Headline Financial and legal Implications**

#### **Financial Implications**

4.1 The payments recommended by the LGO will be met from the revenue budget of the Regeneration and Culture Department

#### **Legal Implications**

4.2 Under the provisions of the Local Government Act 1974 an investigation report by the LGO which finds maladministration leading to injustice must be placed before the authority within 3 months of receiving the report. The approval of payments under section 92 of the Local Government Act 2000 (payments for maladministration) is a Council function by virtue of paragraph 48 of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (Anthony Cross, Assistant Head of Legal Services - tel 252 6352).

### **5. Report Author/Officer to contact:**

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Resources, Access and Diversity Department  
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Resources, Access & Diversity Department  
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**SUPPORTING INFORMATION**

**1. REPORT**

The Ombudsman findings are summarised as follows:

- 1.1 Mr and Mrs Jenkins, Mr and Mrs Pole and Mr and Mrs Forrester live in a small cul-de-sac, Drumble Close, in a quiet residential area. Their houses are situated at the closed end of the cul-de-sac, at the rear of which was an area of undeveloped land, bounded to the east by a main road and otherwise surrounded by housing. The land slopes noticeably, but unevenly, down from the main road, towards Drumble Close. In February 2001, they were advised by the Council of a proposal to develop the land and were invited to submit their comments. Of particular concern was the proposal for access to the site which would involve the demolition of an existing house in Drumble Close. They commented also on the loss of privacy which they felt would be the inevitable result of the development. Their gardens bordered the site and they considered their enjoyment would be adversely affected. The application was approved the Development Control Sub Committee on 13 July 2001.
- 1.2 The consent obtained was not implemented because the developer was able to acquire an additional piece of land which allowed for alternative arrangements for access to the site. When invited to comment on the new proposals which were submitted in February 2002, Mr and Mrs Jenkins and their neighbours submitted no further comments. They considered the access arrangements to the site to be preferable. They accepted that development of some sort was inevitable although their concerns about loss of privacy,

which had been referred to in the previous report, remained. They did not submit any further comments.

- 1.3 The planning officer's report to the Development Control Sub Committee of 30 April 2002 in its assessment of the application, said that:

"The character of the area is likely to change but it is not likely to be significantly detrimentally (sic) so as to warrant refusal. The loss of view and some degree of privacy is also inevitable given that the site was previously rear gardens. However, the development respects the criteria within the City of Leicester Local Plan. The proposed layout allows for the minimum distance required between properties to be retained and also with existing residential properties is achieved"

- 1.4 There was no site visit because members of the Development Control Committee had already visited the site at the time of the earlier application. The recommendation was for approval subject to the Council's standard conditions. The Committee agreed the Officer's recommendations
- 1.5 Once the development was underway the likely relationship between the new and existing properties became apparent. The complainants' initial view was that the new houses were being built at a level significantly higher than existing ground levels.

This, together with the natural slope in the land, would mean that someone at ground floor level would have an unimpeded view over the garden fence into the garden and ground floor rooms of the existing houses in Drumble Close. Mr and Mrs Jenkins contacted the Council to raise their concerns.

- 1.6 Officer A is a Team Leader in the Development Control Department. He visited the site in response to the concerns raised by Mr & Mrs Jenkins and the other residents. His initial view was that the houses backing on to Drumble Close were indeed constructed above existing ground floor levels. On 20 May 2003 he wrote to the developer in the following terms:

"The proposed development was approved....on the basis that floor levels would be existing ground levels as there was no indication of raising of any ground levels....After visiting the site and considering the cross sections my initial view is that the amenity of the existing houses will be detrimentally affected because of the significantly raising of ground levels. I do not consider that the provision of boundary walling/fencing alone would protect amenity. I therefore seek your co-operation in remedying this matter and would be pleased if the floor slabs of the houses on plots 2-9 could be reduced to the original ground level."

- 1.7 In response to this letter the developer wrote to the Council on 23 May 2003. It was drawn to the Council's attention that the site layout plan considered by the development Control Sub Committee, as part of the application, gave no indication of either the floor

levels of the proposed dwellings or existing ground levels and that this information was not requested by the Council. The letter pointed out that an amended layout drawing had been submitted to the council on 17 January 2003 and that it has been requested that this be treated as an amendment to the originally approved drawing. This drawing showed both proposed floor levels and existing contours. On that basis the developer refuted the suggestion that the development was not built in accordance with the approved plans.

- 1.8 The Council's files contain a letter dated 17 January 2003 from the developer to Officer B, the planning case officer. The letter stated ".....please find enclosed copies of the latest Planning Layout No 752.2 Rev L, together with copies of Drawing No 4D68 which supersedes the 4D46. These take account of amendments to the house type identifications.....and we trust may be treated as an amendment to the original application." The Planning Case Officer replied on 3 March saying ".....I confirm that the change in house type proposed (6D68 and layout 4D46 can be treated as a minor amendment to the approved application.
- 1.9 The Council's files contain a number of amended versions of drawing 752. The drawing which accompanied the planning application gave no detail of site levels. Only drawing "L", submitted as a revision with the letter of 27 January to the Planning case Officer included details of site levels. This drawing shows the site contours and indicates the floor levels of each property. Plots 4 and 5 which are closest to Mr and Mrs Jenkins' home indicate ground floor levels of 80.05. Contour lines show a height of 78.5. Contours and floor levels vary for the other complainants, but the minimum by which floor levels exceed contour lines is 1 metre.
- 1.10 Officer A told the LGO'S Officers that there were not grounds on which to consider enforcement action. The Council's letter of 3 March could be construed as having agreed to the as-built floor levels. In addition, his view was that the end result was acceptable in planning terms. The distance between the new and established properties was sufficient to protect against any undue intrusion or loss of amenity. The builder had agreed to provide a 2.4 to 2.5 metre fence which would prevent overlooking at ground level.
- 1.11 Mr and Mrs Jenkins and their neighbours were unhappy at the outcome. The proposed fence would prevent their properties from being overlooked from the ground floor but its height would have an adverse effect on their back gardens. In addition, the height of the new houses had an overbearing effect. They wrote a formal letter of complaint to the Council.
- 1.12 In October 2003 the council wrote to Mr and Mrs Jenkins setting out its conclusions on the completion of its investigation into the complaint. It confirmed that the planning consent had not included a condition to show the floor levels of the development:

"The Issue of whether the development would or would not be built above existing ground levels was not identified by the Council as a concern. In my view, the Council should have sought greater clarity on this issue, but failed to do so."

- 1.13 Officers of the Council have been interviewed as part of this investigation, the Igo's officers agree that, with hindsight, and taking into account the sloping nature of the development site, more information should have been sought from the developer about the ground levels. The developer's letter dated 27 January, and the plans which accompanied it had the effect of authorising the ground levels of the new houses. It was arguable that the significance of the amended plans had not been appreciated. Council officers remains of the view, however, that the end result is acceptable in planning terms. In particular, the distance between properties had mitigated any adverse effect of the increased height of the buildings. In addition, the developer had co-operated with the Council and provided a 2.4m high boundary fence which would mean eye level views from the ground floor windows of the houses under construction. The Council has also commented that one of the complainants' properties has no principal room windows directly facing principal room windows of the new development and is further away.
- 1.14 Two members of the Council's Development Control Committee have been interviewed. Their view was that the sloping nature of the site should have alerted officers to the importance of site levels and that this should have been clarified at application stage.

### **The Ombudsman's Findings**

- 1.15 The Ombudsman concluded that:

“When the application in question was considered by officers in the planning department, and subsequently by the Development Control Committee, no requirement was made, or condition imposed, for the developer to submit details of existing ground levels and proposed floor levels. However, on sloping ground such as this it seems to me that the Council could not properly assess the impact of the proposed development on the complainants' properties without this information. A further opportunity presented itself in January 2003 when the developer submitted a plan that, among other details, showed the proposed ground floor levels at some 1 – 1.55m above existing levels, but the Planning Case Officer did not notice these crucial annotations to the plans. The failure to consider and specify the finished floor levels of the proposed development was maladministration.”

- 1.16 The Council accepts that there was maladministration in that the issues of levels ought to have been clarified at the application stage or when plans were submitted later on showing the proposed floor levels. It goes on to say that at the application stage no representations were received from the complainants. In addition the officers of the planning department who were interviewed considered that the end result was acceptable in planning terms. The distance between facing windows was within the minimum set out in the City Council's Local Plan and the developer had agreed to construct a 2.4metre high fence which, in the Council's view, adequately compensated for the raised ground levels.
- 1.17 To what extent the complainants' amenity has been affected is a matter on which the Council and the complainants do not agree. Officer A's letter of 20 May to the developer spoke of the “significant raising” of ground levels and a detrimental effect on the existing houses and that fencing alone would not be sufficient to protect residents' amenity. Irrespective of the fact that residents made no representation at the application stage,

the complainants' amenity was a material consideration that should have been considered and appropriate steps should have been taken to protect it.

- 1.18 On balance the Ombudsman concluded that had the Council given proper consultation to floor levels it would have stipulated that they followed the existing contours of the ground and so been dug into the slope. He said this because this was precisely the line the Council took with the developer in May 2003 when the problem first came to light. The Council's maladministration here has led to floor levels being raised in error by 1 to 1.55 metres, and although the fence, helpfully negotiated by the Council with the developer has mitigated overlooking at ground level, the fence itself is an overbearing structure and it can do nothing to prevent overlooking from bedroom windows. This represents the injustice suffered by the complainants who have also been put to time and trouble pursuing their complaints with the Council and with the Ombudsman's Office
- 1.19 The Ombudsman found maladministration identified in paragraph 1.15 has led to the injustice to the complaints described in paragraph 1.17.
- 1.20 Accordingly the Ombudsman's recommends:

To remedy the injustice, the Council should commission an independent valuation of the complainants' properties to establish any loss of value which arises from the new properties having been built from 1m to 1.55m higher than would have been the case had the maladministration which he identified not occurred. The Council should then compensate the complaints for any loss that is identified. In addition he recommends that the Council pays £250 to each complainant in acknowledgment of the time and trouble to which they have been put in pursuing their complaint. He also recommends that the Council reviews its procedures to ensure that as, far as possible, the maladministration identified does not recur.

## **2. THE COUNCIL'S RESPONSE**

The City of Leicester Local Plan includes criteria for the spacing of houses to reduce overlooking and protect outlook. It advises that greater distances may be needed where there are differences in level. These guidelines do not prevent overlooking from first floor windows, but usually where there is a boundary fence 1.8 or 2 metres high, prevent overlooking from ground floor windows.

The criteria can be met, depending on the circumstances, by the provision of a higher boundary fence, a reduction in the floor levels of the proposed dwellings, or by increasing the separation distance beyond the minimum in the criteria. It is not certain in this case that a lowering of floor levels would have resulted, had the matter been raised with the developer before a decision was made, as consideration would have been given to any practical issues such as connections to sewers which can affect floor levels.

Notwithstanding the above, the ground level issue should have been addressed at the application stage. The findings of the Ombudsman are, therefore accepted.

Development control officers have been reminded of the need to consider ground and floor levels when dealing with applications for new houses, and the guidelines for checking the completeness of applications amended to refer to the need for details of levels.

### **3. FINANCIAL, LEGAL AND OTHER IMPLICATIONS**

#### **3.1 Financial Implications**

These are dealt with in paragraph 4.1 of the report

#### **3.2 Legal Implications**

These are dealt with in paragraph 4.2 of the report

#### **3.3 Other Implications**

#### **OTHER IMPLICATIONS**

OTHER IMPLICATIONS	YES/NO	Paragraph References within report
Equal Opportunities	NO	
Policy	NO	
Sustainable and Environmental	NO	
Crime and Disorder	NO	
Human Rights Act	NO	

### **4 BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972**

4.1 Local Government Act 1974 (Section 30), press announcements have been made and copies of the report have been made for public inspection at the Customer Services Centre

4.2 Copies of the full report are available from the Ombudsman Link Officer, Resources, Access & Diversity, Ext 7115

### **5 CONSULTATIONS**

5.1 This report has been produced in consultation with the Regeneration & Culture Department and the Legal Services Section in Resources, Access & Diversity Department

### **6 REPORT AUTHOR**

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