

Complaint reference:
12 017 527

Complaint against:
London Borough of Merton

The Ombudsman's final decision

Summary: The Ombudsman could not conclude the outcome was affected by a number of faults in the way it dealt with a planning application for the development of a large site. But to recognise the uncertainty the complainant will feel about what decision would have been reached if there had not been fault, and for her time and trouble, the Ombudsman recommends the Council pays her £500. It should also undertake some improvements to its procedures.

The complaint

1. The complainant, whom I refer to as Ms C, complains on behalf of several local residents about the Council's consideration of a planning application for the redevelopment of a site near their homes. In particular, she complains the Council has failed to take account of or give sufficient weight to legislation, policy, guidelines and other relevant considerations, in relation to the following issues:
 - a) The adopted Planning Brief for the site;
 - b) Consultation with English Heritage and the Greater London Archaeological Advisory Service (GLAAS)
 - c) Impact on the neighbouring Conservation Areas;
 - d) Impact on the amenity of neighbouring residents;
 - e) Air and noise pollution;
 - f) Trees
2. Ms C says these faults have resulted in planning permission being granted for a development that does not accord with the development plan.
3. Ms C also complains about the way a site visit for the Planning Committee members was conducted.

The Ombudsman's role and powers

4. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
5. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She considers whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)

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6. The Ombudsman provides a free service, but must use public money carefully. She may decide not to start or continue with an investigation if she believes:
 - the alleged fault has not caused injustice to the person who complained;
 - the injustice is not significant enough to justify the cost of her involvement.*(Local Government Act 1974, section 24A(6))*
 7. In the context of complaints about planning applications, this means the Ombudsman will often consider whether the alleged fault has, or is likely to have had (on the balance of probabilities), an impact on the outcome of the determination of the application.
 8. Finally, our role is not to provide answers to each and every criticism a complainant may have about a Council. The courts have held that we may limit the scope of an investigation and identify certain broad categories of complaint. So investigators, on behalf of the Ombudsman, have wide discretion to decide what to investigate and how the investigation should be conducted.

How I considered this complaint

9. I have considered:
 - the complaint and the documents/comments provided by Ms C;
 - the Council's responses to the Ombudsman's enquiries and Ms C's comments on those responses;
 - The relevant planning policies, the planning application documents, the Committee report, and the minutes of the Committee meeting;
 - Interviews of both the conservation officer and the Head of Future Merton (who is the conservation officer's manager) and a senior planning officer.

What I found

General context and background

10. The site comprises two areas of land separated by a public footpath. Of particular concern to Ms C is the development of Area 1 for an 'assisted living development' (ALD) for the elderly, and its impact on Road A to the east and Road B to the west. Properties C and D, located at the end of Road A, are two of the nearest dwellings to Area 1 and are within a Conservation Area. Area 1, which contains buildings and a car park is not within a Conservation Area and contains no buildings of note. There are nineteen individual trees and one group within Area 1 which are all protected by a Tree Preservation Order. The whole site is within an Archaeological Priority Zone, and the whole borough is designated as an Air Quality Management Area (an area considered unlikely to meet air quality objectives).
11. The applicant had pre-application discussions with the Council and some proposals for Area 2, for health facilities, were presented to the Council's Design Review Panel on several occasions. The proposals for Area 1 were not presented to the Panel.
12. A planning application was submitted for health facilities and for the ALD, the latter consisting of residential units over two and three storeys with associated parking. Amendments were later submitted, primarily relating to the proposed materials and window details.

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13. The case officer visited the site and took photographs. Committee Members attended a site visit/presentation and were able to walk around the site and ask questions. Residents were not aware of the visit, but the owner of property C spoke briefly to some Members, and two entered her home to see the impact from the property. Following the visit, the Committee considered the proposal.
 14. Planning law requires that applications must be determined in accordance with the development plan unless material indications indicate otherwise. The development plan includes the London Plan and the Council's own development plan. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how they should be applied and is a material consideration.
 15. Five years before the application, the Council had adopted a planning brief (the Brief) for the site. The Brief was a significant material consideration to be taken into account when considering applications for the site, but it had not been subject to independent examination by the Planning Inspectorate, and did not therefore carry full statutory weight.

The site/meeting presentation

16. The site meeting was attended by:
 - Members of the Planning Committee;
 - Senior development control officers;
 - Representatives of the applicant;
 - The architects;
 - Representatives of the developer
17. The Council's planning protocol provides that when Committee Members attend presentations by applicants/developers, ward councillors and consultees and objectors will be invited. This did not happen and Ms C says the visit went beyond a site visit and was in fact a presentation, and so the Council's policy was not followed.
18. I understand plans were displayed. The Council says there was no formal presentation by the applicants, but there was a question and answer session where the applicants' representatives assisted Members in understanding the plans and proposals. It says most of the time was spent walking around the site and that the Members' right to request a site visit should not be challenged.
19. I consider this went beyond a site visit and should have been considered as a presentation. So the Council was at fault because the planning protocol should have been followed and other interested parties invited. This is not challenging Members' right to request a site visit. But the Council should ensure its procedures are followed so there can be no impression of bias.
20. Although I conclude the Council's procedures were not followed, I have seen nothing to make me conclude this made any difference to the eventual outcome or that the Committee would have reached any different decisions. Members were able to view the site and consider the impact of development.
21. The Council has since undertaken to revise its procedures to clarify the difference between a presentation and a site visit, to ensure there is no confusion in the future. I am pleased it is now clarifying matters.

The adopted Planning Brief for the site

22. The Brief is a significant consideration to be taken into account when considering applications for the site. It set out “maximum parameters for height and built area” and said that any planning application should show how these had been taken into account. It includes a schematic map on which an area for new buildings is shown towards the front of the car park.
23. The Committee report said the Brief provides the framework to guide redevelopment of the site. It noted there had been key changes to health requirements since the brief, but the principle of redevelopment to facilitate better healthcare was unchanged. It said proposals had to be considered against the brief and any changes from it justified.
24. In respect of the ALD, the Brief says a new block, to the west of the site and towards the front of the car park, was supported in principle. It says the development area is determined by the form of adjacent buildings, the footpath and protected trees. Its height should be a maximum of 12.5m/three storeys; the large trees in the car parking area protected by the TPO must be retained and protected during construction; and the Council will expect any landscaping on the site boundaries to be retained and enhanced where necessary to protect privacy and amenity of neighbouring residential properties.
25. The report explains that circumstances had changed since the Brief was adopted, and the scale of the health facility would be less than previously expected. It also said the health facilities could now only be achieved in conjunction with an enabling development, like the ALD. (Enabling development may be permitted to make viable other development which is meeting a social need.) It said this would also provide additional benefits for the elderly community and referred to the National Planning Policy Framework principle to:

“take account of and support local strategies to improve health, social and cultural well being for all, and deliver sufficient community and cultural facilities and services to meet local needs.”
26. The report considered the development to be in broad compliance with relevant planning policies and the Brief. Ms C disagrees. She says the Committee was not made aware of the significant departures from the Brief, namely:
 - that the ALD will have a much larger footprint than the maximum parameters set out in the Brief;
 - the ALD extends across the whole of Area 1, rather than being positioned towards the front;
 - that large, mature TPO trees and much of the landscaping on the boundaries will be removed.
27. Furthermore, she says no justification for these departures was provided. Therefore, the claim that the proposal is in broad compliance with the Brief is misleading. She feels that, if Members had been aware of the differences they might have felt that they had more grounds to refuse permission.
28. The Council says requirements for other parts of the site had changed and the enabling development required a different design approach to that previously envisaged. The Council has to balance the positives and negatives of any scheme. In this case they decided the new buildings of modern design providing enhanced health care and specialist residential accommodation for elderly persons were in keeping with the scale and character of nearby buildings in the

conservation areas. They were satisfied that planning permission should be granted.

29. While there did not have to be absolute adherence to the proposals in the Brief, it had to be taken into account and given some weight. I consider that any significant differences should have been reported to the Committee and their merits addressed. Clearly, it will be a matter of judgment what were significant differences, but I consider major changes in the scale of proposals where they might be considered to affect neighbouring development, should have been addressed. The report does compare the built footprint with the areas for development in the Brief, but notes the later refers to a building to the frontage and goes on to say the new building has been designed around the protected trees with a main spine along the footpath.
30. It is undoubtedly the case that the area for development in this part of the site was significantly increased, but the Council's view was that the proposals were in broad compliance with the Brief and, taken as a whole, I accept this.
31. I nevertheless consider the report should have made explicit that, in part, the enlarged form of development was considered to be acceptable because it addressed the constraint of the protected trees, although this can be inferred from the Brief and the description in the report. However, matters had changed significantly over the years and Members could have been in no doubt that a different type of development was now proposed or about its scale and location. While the lack of clarity about how the development differed from the Brief was fault, I cannot say lack of clarity had an impact on the final decision. Members were made aware of why the scheme had moved away from the Brief and why a different design was considered acceptable, and agreed to this.

Conservation Areas

32. The report describes which parts of the whole site are within and outside Conservation Areas and says it is important to ensure that the development enhances its setting adjacent to, and does not detract from views into or out of, them.
33. In assessing the development of Area 1, the report refers to some adjoining Conservation Areas, but not that abutting the boundary footpath to Area 1 and containing Road A and adjoining streets.
34. The objections/comments from residents and local groups, included:
- appears ugly and obtrusive with no reference to its surroundings
 - materials and design are still inappropriate for the setting, adjacent to a conservation area
 - the building has an industrial scale and appearance, out of keeping with residential properties locally
 - would seek changes to the proposed design to follow adopted Conservation Area and planning policies....elevations of the ALD make no attempt to blend with the distinctive vernacular of the area.
35. The report describes the buildings to be demolished as having a utilitarian appearance which do not make a positive contribution to the adjacent Conservation Area or the surrounds. The proposed ALD building is described as a series of projecting bays and recesses to avoid a monolithic form and provide interest. Its scale, with set-backs at roof level, results in a maximum of three

storeys that are comparable in height with the neighbouring two storey pitched roof houses and maisonettes, and conditions were proposed to secure use of appropriate external materials:

“to ensure that the building will complement the adjacent conservation area”

36. The report goes on to say:

“current view from [Road A] towards [the footpath] takes in a utilitarian looking building that makes a negative contribution to the character and appearance of the area and the introduction of a new well designed building will enhance the streetscene rather than detract from it”

37. Minutes of the meeting state Members expressed concern that the ALD had not been considered by the Design Review Panel at the pre-application stage. They were told that senior design officers in its Future Merton team had been involved in the review of the ALD’s design, including discussions with the designers to secure improvements.

38. Ms C complains that:

- the Design Review Board was not consulted on the ALD;
- the Council did not seek specific comments from its Conservation Officer on the amended proposal, and so no expert advice was presented to the Committee;
- the Committee report:
 - i. does not refer to all adjoining Conservation Areas, so does not contain any assessment of the significance of these heritage assets, the features within it or the contribution of its setting, contrary to the NPPF;
 - ii. does not refer to any of the issues recommended in ‘Planning Policy Statement 5 – Practice Guidance’ on how to assess the impact of a development on a conservation area;
 - iii. omits the fact that the ALD will be larger than the existing building, and does not explain that trees which shield the site from the Conservation Areas are to be removed.

39. She says that failure to seek appropriate expert guidance to assess the impact on the neighbouring Conservation Area amounts to fault, believes the report is not transparently presented or robustly evidenced, and fails to give convincing justification for the change in impact on Conservation Areas. Committee Members should have been able to take this information into account when making their decision.

40. The Council’s conservation officers work in the Council’s regeneration team which contains conservation, policy and transport planning expertise. The Council says that the team’s input was in-depth from the beginning, so there was no single expert response.

41. The team manager was previously the Council’s urban designer. He had drawn up the Brief, was closely involved in the design of the building from its early inception and took the lead in the preliminary discussions with the applicant. The Council was not satisfied with the initial proposals for the ALD building. Following discussion with the conservation officer, the team manager met with the applicants and amendments were made. He considered the changes to the

scheme, along with conditions to control materials, made it satisfactory and it could be recommended for approval.

42. The conservation officer confirmed she discussed the scheme with the team manager. She said they had been unhappy with the elevations initially proposed, but these were revised and she felt the conditions enabled the Council to have some further control over the finished development. She says:

“If I had written a conservation response to the proposal, there were certain parameters that had already been agreed on before my comments or input was sought. The scale and massing of the proposal had already been determined to a certain extent by the parameters set out in the planning brief. The number of units to be accommodated on the site had already been established as well as the need to retain existing trees on the site. “The service needs of the building requiring one block rather than a series of buildings on the site had also been established. The fact that these aspects had already been defined would have left limited scope to influence the scale, massing and layout of the proposal on the site.

“Given a blank canvas, the building would ideally have been broken down into a number of separate buildings. The original view towards the site from [Road A], although towards a building, had the benefit of space and landscape around the former [building]. The approved building presents an unrelieved, continuous elevation...having a more dominant impact on the character of [Road A].

“Regarding the treatment of the elevations, it was stated that they were not felt to be of sufficient quality for this location adjacent to a conservation area. Alterations were sought with the object of raising the design standard and trying to visually reduce the massing of the building”

43. It was for the Council to decide whether to consult the Design Review Board on the ALD. Members knew it had not been consulted and were entitled to make a decision on the application. There was no requirement for the Council to consult the Design Review Board. It consider the expert opinion of the conservation officer, which formed part of the assessment of the proposals. There is no requirement for comments of individual officers to be identified. I do not accept that expert advice was not provided.

44. The Committee report does not refer to all adjoining Conservation Areas in its assessment of the ALD. I consider the Council should have made an explicit assessment of each. However, Members were aware that Conservation Areas surrounded the site and there is specific reference to conservation area issues when describing the ALD development and to improvements to the appearance from Road A (within a Conservation Area). Experienced expert officers had considered the design of the development and sought changes to it and the revised scheme was considered acceptable. I do not see there has been any material failure to consider the principles for assessing proposals which are set out in ‘Planning Policy Statement 5 – Practice Guidance’. Members had seen the site and will have been aware the building was larger than those which it replaced and there was an accurate description of main features. More information can almost always be provided, but I consider the report was generally sound. I do not consider I could conclude a different outcome would have resulted if there had been no fault by the Council.

Failure to obtain responses from English Heritage and GLAAS

45. Where there is a requirement set out in law to consult a specific body on a planning application, that body is under a duty to provide a substantive response, usually within 21 days. Planning authorities have a duty to take into account any representations made by statutory consultees.
46. Here, an Archaeological Survey was submitted with the application and the Council's records show that it created consultation letters for both English Heritage and its specialist London archaeological sub-division, GLAAS. Neither replied. English Heritage has no record of receiving the consultation letters. It is possible the consultation letters were not sent, but it is also possible that they were lost in the post or, for other reasons, not received or identified by English Heritage and GLAAS. I cannot know which of these things happened and cannot say, on the balance of probability that there was an error by the Council.
47. The Committee report says:
- “English Heritage (GLAAS) did not formally respond to the consultation, however it is noted that as the site lies within an Archaeological Priority Zone there is potential for the development to impact on archaeological remains and appropriate conditions will be imposed”
48. A condition was imposed on the permission, requiring the submission of a written scheme of archaeological investigation.
49. Ms C says the fact that English Heritage was a statutory consultee indicates that some form of expert assistance was required in the decision making process. As such, she believes the opinions of English Heritage and GLAAS could have been crucial to the outcome of the application. She says the intention of the legislation is for the process to be truly one of consultation, and the failure to make any attempt to chase a response amounts to fault. She also says the Committee report misleads the reader into thinking that:
- only GLAAS was a consultee;
 - that they were consulted; and,
 - that some form of informal response had been received.
50. The Council says it fulfilled its statutory duty; that consultees are given a timescale to respond, but if there is no reply it is unreasonable to keep the application pending indefinitely.
51. I do not see that the Committee report misrepresented the situation. While there is some ambiguity its wording, it was accurate and I do not consider any injustice arose from this. I also do not consider there was fault by the Council in dealing with the planning application, when the time for a response has passed. It would have been possible for the Council to pursue the lack of a response but there was no requirement for it to do so. In any event, from the planning Brief it seems there were no buildings of architectural merit in Area1; the archaeological appraisal suggested it was a low risk site (though a condition to address archaeology was nevertheless imposed) and the Council addressed conservation issues. I cannot know whether they would have responded, or what the advice contained in any response would have been (though Ms C suggests, and I accept as reasonable, that their comments would reflect those of the conservation officer), or what would then have happened with that advice but, on the balance of probability, I do not consider I could conclude material injustice has been caused. Ms C points out the Council had to give special attention to the desirability of preserving or

enhancing the conservation area. Its reasons for granting permission address this as its first point and I am satisfied the Council took this into account.

52. The Council has commented that there are lessons to be learnt from the complaint. I agree. I consider it would be an improvement to its procedures to require statutory consultation responses to be chased if there is no response within the statutory period.

Assessment of the impact on the neighbouring amenity

53. The Council's development plan refers to its Supplementary Planning Guidance which does not form part of the development plan, but is to be taken into account when determining planning applications. This says:

"The windows of habitable rooms should not, at short distance, face directly onto a flank wall. Within new developments, where such windows face towards a flank wall of a neighbouring dwelling, then a distance of 4 meters for a single storey flank wall, 12m for a two storey flank wall, and 15 metres for a three storey flank wall would be regarded as minimum spacing. This would allow for sunlight penetration over the roof of the flank wall, and would provide a reasonable outlook.

Where new housing which is orientated to face directly towards an existing residential area is proposed, then a spacing of at least 10 metres (for 2 storey dwellings) or 12.5metres (for 3 storey dwellings) will be required between the new dwellings and the site boundary

The Building Research Establishment publication on daylight and sunlight provides a guide to standards of daylighting and sunlight. These standards ensure that spacing is provided to allow a certain level of daylight to be achieved to provide adequate interior illumination to rooms.

These standards may be applied in relation to the spacing of buildings one to another..."

54. The BRE guidance includes a 25° obstruction angle test, whereby a line is drawn at 25° from the horizontal plane of the nearest habitable room window, to see if it intersects with the development.
55. The Committee report identifies the impact on neighbour amenity as a major consideration. It says Council policy requires all proposals for residential development to safeguard amenities of occupiers in terms of maintaining adequate sunlight, daylight and privacy.
56. The report includes the following objections:
- a building rising to 3 storeys will be overbearing , in terms of two storey neighbouring properties, resulting in loss of sunlight and overlooking, also loss of openness from the end of [Road A]
 - potential loss of privacy from balconies and roof terraces at second storey
 - illustrative drawings misrepresent the impact on neighbouring houses
57. In assessing the impact of the development, the report says:
- "Given the height and orientation of the [former] building and the row of conifer trees.....it is not considered that the proposed [ALD] would result in an increased sense of enclosure at the end of [Road A]."*

"In terms of potential for loss of sunlight, the proposed building is set away from the flank elevations of [Property C and D] by a minimum of 10m. The existing row

of mature conifer trees that runs between the two storey [former building] and [the public footpath] casts considerable shadow over the footpath, towards the gardens of the two end houses and it is not anticipated that the proposal would result in significant changes in terms of sunlight. The 10m gap between the closest balcony and the side boundary fence at [Property C] is not dissimilar to the existing separation from the two storey [former] building located at the end of [Road A] and it is not considered that overlooking would be significantly increased to an extent that would warrant refusal of the scheme”.

“...the nearest part of the southern wing faces directly towards the highway in [Road B], thus raising no issues in respect of loss of amenity for occupiers of these nearby dwellings”.

58. Ms C says the Council has provided no documentation, calculations or evidence to support the claim that the impact of the ALD on neighbouring properties was considered properly. In particular, she says:
- the case officer’s photographs do not show any of the windows on the flank elevations of Properties C and D, nor are there any annotations of window positions. As a consequence, she believes the Council has failed to realise that habitable room windows face directly towards the new development, and has failed to take account of the impact on them and the residents’ rear gardens;
 - the case officer’s consideration of loss of light is limited to stating that the proposed building will be set away from the flank elevations of the nearest houses by 10m, and that existing conifers already cast a shadow across the path. Although this is true, it does not support the claim that there would be no significant change in terms of sunlight upon the neighbouring homes. The trees are 6-7m high and only screen short sections of the site, whereas the ALD is 9m high and 80m long, so will cast a much greater shadow and block out more light;
 - the Council should have used the 25° obstruction angle test to assess the impact on light levels. Her calculations show that the 25° line from the nearest habitable room window of Property C intersects with the corner of the ALD roof;
 - the Committee report does not explain that the proposal is contrary to the SPG separation distances and BRE guidelines
 - although some overlooking of Property C and D’s front windows and gardens currently exists (from 5 windows in the 5.5m high nursing home), the ALD will be 9m high and 80m long, with over 100 windows facing Road A, as well as further private roof terraces. Ms C says Property C will be particularly affected, with 10-20 windows facing the side windows, and a further 20 overlooking the garden. As such, comparisons to the separation distance of the existing building is misleading as the ALD will be much larger, there are many more windows and roof terraces, and all current screening provided by trees on the boundary will be removed.
59. The case officer has left the Council but plans show and a senior officer says there will be some tree planting on the part of the boundary between the new building and Property C, and there is a footpath between the site and the house. He attended the site visit and says that Members walked round the site and the occupier of Property C came out and talked to Members about the proposals.
60. The Council says officers had regard to the BRE guidance, and interpreted the impact of the development from visual analysis of the plans and from the site visit.

It says the SPG is guidance, although it is a consideration when assessing planning applications. The developer's calculations show the 25° line has been marginally crossed. But in this case, it was reasonable to take account of the impact of the existing building and planting and it was concluded no significant overshadowing or impact on light to neighbouring properties would occur.

61. I can understand why Ms C and the owner of Property C would like to have seen the calculations that can be done to assess the impact of buildings on neighbouring properties, and I consider there should have been a more detailed analysis in the report of why the development was considered acceptable in terms of the impact on Property C. There was no mention of the windows in the side elevation of this property, or reference to the SPG/BRE guidance, and why a smaller separation distance was deemed to be acceptable here. I consider these omissions amount to fault.
62. Ms C has also pointed to Supplementary Planning Guidance references to privacy, which can be achieved by distance, design or orientation. The minimum distance between habitable rooms and kitchens is 20m for two storey dwellings, more if taller buildings face each other. Roof terraces and balconies are not acceptable where they would overlook habitable rooms or gardens. Here the buildings are broadly at right angles, but there are flank windows and the separation distance is half that, so this issue should have been explicitly addressed. That it was not was fault.
63. However, I consider there is insufficient evidence to enable me to conclude, on the balance of probabilities, that this fault has altered the outcome. In reaching this view, I consider it was appropriate to take account of the impact of the existing buildings and planting, and I am particularly mindful that Members would have been fully aware of the location and scale of the development and the surrounds, including Property C. They were also aware of the objections, having spoken to the occupier of Property C, and objections were included in the Committee report.
64. I consider however that one lesson for the Council is that a large scale development such as this should not mean that an appropriately detailed analysis of the impact on particular properties is not done.

Air and noise pollution

65. The NPPF says planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and the cumulative impacts on air quality of individual sites in local areas. Planning decisions should ensure that any new development in AQMAs is consistent with the local air quality action plan.
66. The London Plan says development proposals should minimise increased exposure to existing poor air quality and make provision to address local problems of air quality (particularly within AQMAs and where development is likely to be used by large numbers of those particularly vulnerable to poor air quality, such as children or older people). Increased exposure to existing poor air quality should be minimised by avoiding new potentially sensitive receptors in locations where they will be affected by existing sources of air pollution.
67. The Council's development plan say all proposals for residential development should safeguard the residential amenities of occupiers, and occupiers of nearby properties, in terms of avoidance of noise and other forms of pollution. The Council's current validation checklist for full planning applications says an air

quality assessment is compulsory for those schemes which would have an impact on air quality.

68. An Acoustic Report accompanied the application; the Council's Environmental Health team were consulted, and they raised no objections, subject to conditions. A supplementary noise report, covering part of the, was submitted subsequently but was not added to the Council's website at the time. Environmental Health did not provide comments on the supplementary report.
69. The Committee report says local planning policies seek to ensure that nearby occupiers are protected from development that may result in adverse impacts from noise generation or noise pollution. It says the ALD is designed as for frail elderly persons and was not anticipated to generate significant noise levels. There is no roof level plant associated with the ALD.
70. Ms C says the Council has failed to have regard to EU and UK law and national and local policy, which expresses the need to pay particular attention when a new residential development is to be located in an area exceeding acceptable pollution levels. She believes the main access road must be one of the most polluted roads in the Council's area. She also notes that the Council imposed a condition on a planning permission for a nearby site, which required the submission of an air quality assessment prior to the commencement of development.
71. Ms C also complains that the supplementary noise report was only added to the website two years after the survey was undertaken. She says it shows expected noise levels adjacent to neighbouring homes will breach the level considered by the World Health Organisation to be detrimental to health and quality of life.
72. The Council says officers sought relevant advice and, while recommendations were made to ensure that matters including sound proofing, and construction times were regulated, no issues were raised about the impact on air quality. The development is located on a busy road, but it is not considered to be a highly polluted area, and the ALD building is for residential use. Therefore, a specific air quality assessment was not deemed to be necessary. The Council also notes that air quality is covered by separate Environmental Health legislation.
73. The Council accepts the supplementary noise report shows some noise levels over the WHO recommended level. But it says these are a 'worst case scenario', and that noise levels over the threshold for only some of the time does not contravene the WHO guidance overall. It also says a revised report considered more recently confirms this. Ms C disputes this.
74. The late inclusion of the report on the Council's website was fault, but this did not cause substantive injustice. It was for the Council to decide whether it needed a formal technical assessment, but the advice it received did not identify any major concerns and I do not consider Ms C or residents can have suffered an injustice here. I can see nothing which would lead me to conclude the development will increase noise or pollution for them.

Trees

75. The London Plan says the assessment of an existing tree's value should be derived using a combination of amenity assessment and a recognised tree valuation method. The Council's development plan says development will not be permitted if it would damage or destroy one of more trees:
 - Protected by a tree preservation order (TPO), or
 - Within a Conservation Area; or

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- Which have a significant amenity value as perceived from the public realm unless:
 - i. Removal of one or more trees is necessary in the interest of good arboricultural practice, or
 - ii. The reason for the development outweighs the amenity value of the trees.
76. Here, the application was accompanied by a Landscaping Statement, with a tree condition survey, and the Council's Trees and Landscape Officer (TLO) was consulted on the proposal. The Committee report highlights that the ALD site is protected by a TPO, and lists the tree works that had already been approved for removal and replacement of four of the TPO trees.
77. Objections included in the report say:
- *"Trees must be retained along the rear boundary with [Road A]"*
 - *"loss of trees is detrimental"*
78. The TLO's comments are summarised as:
- "with the exception of the removal of a mature Pine tree ... the proposals are acceptable subject to conditions to protect remaining trees during construction and re-landscaping the entire grounds in line with the submitted landscaping proposals".*
79. The TLO also said there are no objections to the removal of three further trees, subject to the use of replacement planting as set out in the Landscaping Statement. The report also notes that:
- "the row of mature trees across the rear of the site and the group nearest to [Road B]... are all to be retained. Thirteen new trees are proposed to be planted around the [ALD] complex and, subject to conditions to protect retained trees...., the landscaping plans are supported, providing enhanced visual amenity and biodiversity, in compliance with adopted policies".*
80. Ms C says the information about the trees in the Committee report is limited, and there is no rigorous assessment of the existing trees' amenity values. She refers to the London Plan's recommendation that a tree's value should be derived in conjunction with a recognised tree valuation method and notes the TLO's concern about the removal of a mature pine and the lack of further justification for its removal. She says the Committee report omits the fact that 40 trees will be lost from Area 2 and that there is no mention of the amenity value of the landscaping/screening around the perimeter. Ms C says the report does not include residents' objections about one of the TPO trees near Road B, and wrongly qualifies its removal by saying this tree is in poor condition when the applicant's landscape statement says it is not. She believes the loss of large, mature trees will not be compensated for by the planting of immature saplings.
81. The Council says the trees and landscaping information submitted with the application was scrutinised by the Council's TLO and it is inherent in that assessment that the amenity value of the trees is considered. The tree condition survey, in conjunction with the TLO's site visit, enabled the officer to use her expertise and experience to offer views for the Committee to consider.
82. The Council says the loss of TPO trees is in some cases because of their condition and age, and that it has to balance the positives of any scheme in reaching a decision. I note the Council had already agreed to the removal of the large horse chestnut tree in the centre of the site because of its poor, and to two others.

There was careful analysis by the TLO regarding the impact of the loss of trees and any landscaping, but that assessment was balanced against the provision of the beneficial additional trees and landscaping.

83. With regard to the description of the condition of some of the trees, the Council accepts the Committee report incorrectly referred to them as poor, when the applicant's statement said they were fair. However, it says from an arboriculturalist's perspective, the two terms are effectively the same. Ultimately, the trees are not in good condition and have defects that are accurately described in the applicant's tree survey details.
84. Again, it was for the Council to decide how it assessed the trees on the site. I see no reason to conclude the Council failed to undertake a reasonable and objective assessment. Ultimately, the tree officer used her professional judgement to assess their worth. I do not consider this was fault. The report does not address the loss of each tree, but did report residents' concern about the loss of trees and does say which are to be retained. That is not fault.

Agreed action

85. I considered the Council should revise its procedures to clarify the difference between a presentation and a site visit; require statutory consultation responses to be chased if there is no response within the statutory period; and ensure that appropriately detailed analysis of the impact on particular properties is done for large as well as small developments. I also said that cumulatively, Ms C will have suffered an injustice because she cannot be certain, but for the Council's faults, a different decision would have been reached. For the injustice caused by this uncertainty, and for the time and trouble to which she has been put, I recommend the Council makes her a payment of £500. The Council has agreed.

Final decision

86. I have concluded the Council did not follow its procedures in organising the presentation; did not provide sufficient clarity in how the scheme differed from the planning Brief; should have made an explicit assessment of the impact on each Conservation Area; and should have referred to side windows to Property C, and Supplementary Planning Guidance policies, and why a separation distances were deemed to be acceptable; and should have included the supplementary report on its website at the time. I consider these omissions amount to fault.

I do not see that any of these issues individually caused substantive injustice however. In essence, I see no reason to conclude, on the balance of probabilities, that the planning permission would not have been granted. However I also recognise that these cumulative faults will have caused Ms C an injustice because she cannot be certain, that the same decision would otherwise have been reached. For the injustice caused by this uncertainty, and for the time and trouble to which she has been put, I recommend the Council makes her a payment of £500.

Assistant Ombudsman's decision on behalf of the Ombudsman.