



The Commission for  
Local Administration in England

# Report

on an Investigation into  
Complaint No 05B14509 against  
Oxford City Council

30 November 2006

The Oaks No2 Westwood Way Westwood Business Park Coventry CV4 8JB

# Investigation into Complaint No 05B14509 Against Oxford City Council

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## Key to names used

Mr and Mrs Oakham	-	Complainants
1 Regency Gardens	-	Complainants' Home
3 Regency Gardens	-	The Extension Site

## Report Summary

### Consideration/Neighbour Amenity

The Council failed to record how officers had considered the impact of the contravention of the 45° Code on the complainants' home when considering their neighbour's application for planning permission for an extension which contravened the Code.

### Finding

Maladministration causing injustice, remedy agreed.

### Recommended remedy

The Council will pay to Mr and Mrs Oakham £750 and has issued guidance to officers requiring them to note how they reach a decision and to put their report on the Council's website.

## Introduction

1. Mr and Mrs Oakham complain that the Council failed to give adequate consideration to their objections to their neighbour's extension. In their view the extension contravened the 45° rule in that it reduced their light and had an overbearing impact on their home.
2. The law generally requires me to report without naming or identifying the complainants or other individuals. The names used in this report are not the real names.
3. One of the Commission's officers has submitted written enquiries to the Council, shared the Council's responses with the complainants and put to the Council proposals for a settlement of the complaint. Both the complainants and the Council were sent a copy of the factual part of this report in draft, prior to the addition of the conclusions. I have taken account of their comments in preparing the final text and reaching my conclusions.

## Legal and Administrative Background Investigation

4. The Council uses the 45° Code to assess the impact of development on daylight, sunlight and outlook when considering impact on residential amenity in planning decisions.<sup>1</sup> Their Code requires that :

"In normal circumstances no development should intrude over a line drawn at an angle of 45° in the horizontal plane from the midpoint of the nearest window of a habitable room and rising at an angle of 25° in the vertical plane from the cill."<sup>2</sup>

5. The Case Officer considering an application will complete an appraisal report which is then passed to the Senior Planner for confirmation of the proposed delegated decision.<sup>3</sup>

### Events Leading to the Complaint

6. On 9 May 2005 the Council received a planning application for a ground floor extension to 3 Regency Gardens. On 14 June 2005 Mr and Mrs Oakham, the local community association and other residents were sent a standard consultation letter. The application was posted on-line on the Council's website.
7. By letters dated 4 and 13 July 2005 Mr and Mrs Oakham objected to the planning application. The Council did not receive any other objections.

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<sup>1</sup> Appendix 5 Second Draft Oxford Local Plan Deposited February 2003, Para 7.15.1

<sup>2</sup> Ibid, Appendix 5 Para 5

<sup>3</sup> Council Constitution – Delegated Powers of the Planning Business Manager

8. Mr and Mrs Oakham objected to the proposal because in their view the extension would contravene the 45° Code as measured from their rear windows, thus reducing their light and amenity.

9. In his letter of 4 July 2005, Mr Oakham says:

“... The house extension coming up close to the fence and going higher than the fence will block the main source of daylight entering our sitting room ...”

In his letter of 13 July 2005 Mr Oakham expands on the point saying:

“The proposed extension will, in addition to blocking light going into our living room, also block the light into our tiny conservatory which we use as a study, making it impossible for anyone to work there ...”

10. The degree by which the application contravened the Code is shown on the plans attached at Appendices 1 and 2.

11. The Ward Members for Regency Gardens were notified of the application and did not request that the application be referred to the Planning Committee. Officers granted planning permission under the Council's Scheme of Delegation on 12 August 2005.

12. In response to my enquiries the Council says that the planning file contains an incomplete appraisal report which does not refer to the 45° Code. Mr and Mrs Oakham's letters are on file and the Council says in its letter to me dated 24 February 2006:

“...I have no reason to doubt that the case officer would have taken into account their views when making the recommendation. However, in the absence of the case officer's notes and a fully completed appraisal form, I cannot say for certain what may or may not have been considered...”

#### The Complainants' View

13. Mr and Mrs Oakham believe that the Council failed to take into account the extent of the impact on their amenity the extension to their neighbour's home would have and that had the Council properly considered it in line with the guidance it would have refused planning permission.

#### The Council's View

14. The Council accepts that the file does not contain any record of how the case officer or a senior officer considered the impact on Mr and Mrs Oakham's home and in particular there is nothing to show the 45° Code was considered. The Council's

present planning officers have reviewed the decision and in their view, given in the Council's letter to me dated 24 February 2006:

"...the [provisions of the Code] are just guidance that planning officers should follow when considering the application at hand, not rules and are open to interpretation...refusal [of a planning application] would be considered only if it was felt that in the case officer's and senior officer's opinion, a neighbour would suffer serious environmental consequences. Despite the lack of documentary support which I fully accept is a serious omission the case officer and the senior planner who confirmed the recommendation were of the opinion that [Mr and Mrs Oakham] would suffer no such consequences".

The letter continues:

"As the Planning Services Business Manager has informed me that it would be unlikely that were the application to be determined now a different outcome would result, it would not be appropriate for the Council to revise its decision..."

15. The Council has revised its guidance to staff to remind planning officers that they need to record how they have reached their decision and it has also introduced a policy requiring the case officer's report to be posted on the Council's website.

## Conclusions

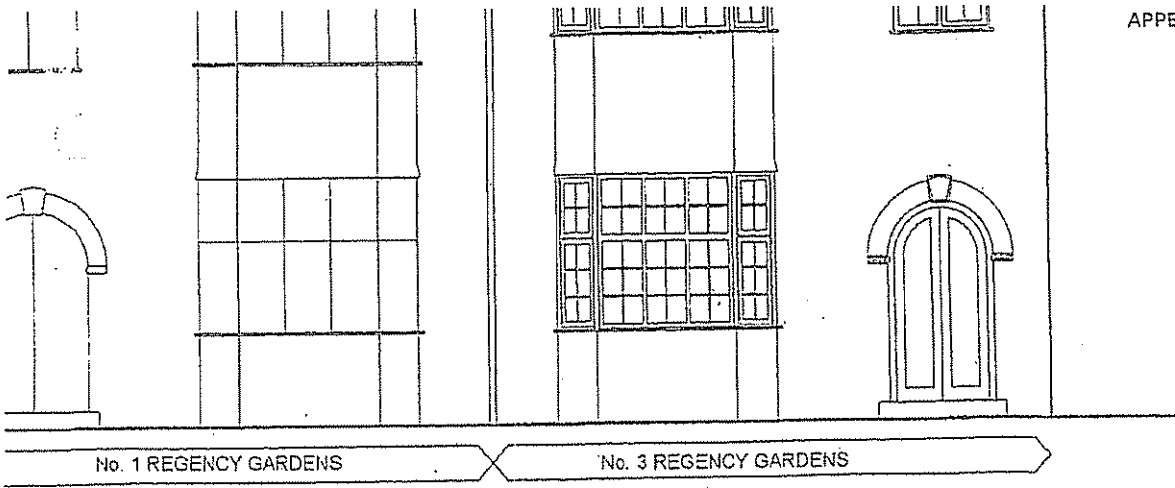
16. Public confidence in the planning process can only be maintained if councils can show that appropriate consideration has been given to the guidance issued by central government and their own local plan policies. That confidence will be reduced if, when challenged, officers cannot show how they reached their professional judgment by reference to notes or reports in which their reasons are recorded.
17. In this case, the relevant file contains no record of how officers reached their view that, although the extension contravened the 45°Code, the development was acceptable. This was maladministration.
18. It was right for the 45° Code is a guide to be taken into account when deciding whether planning permission should be granted. The professional view of the present officers, who have replaced those who made the original decision, consider that although the Code is contravened the impact of the extension is not sufficient to warrant a refusal. They say they would recommend granting planning permission if the same application were presented now. That is a matter of professional judgement and I have taken it into account in concluding that had the administrative error not occurred the outcome would have been the same. However, Mr and Mrs Oakham have suffered the injustice of avoidable outrage and frustration from the Council's error and for that a remedy should be given.

## Finding

19. For the reasons given in paragraphs 18 I have found that there was maladministration by the Council leading to an injustice. In accordance with my recommendation the Council has agreed to pay to the complainant a sum of £750, has acknowledged the importance of the failing and has taken action to prevent it happening again. That is an appropriate remedy for the injustice I have found. But I have completed my investigation and issued this report because the circumstances of this complaint raise a matter of public interest.

J R White  
Local Government Ombudsman  
The Oaks No 2  
Westwood Way  
Westwood Business Park  
Coventry  
CV4 8JB

30 November 2006

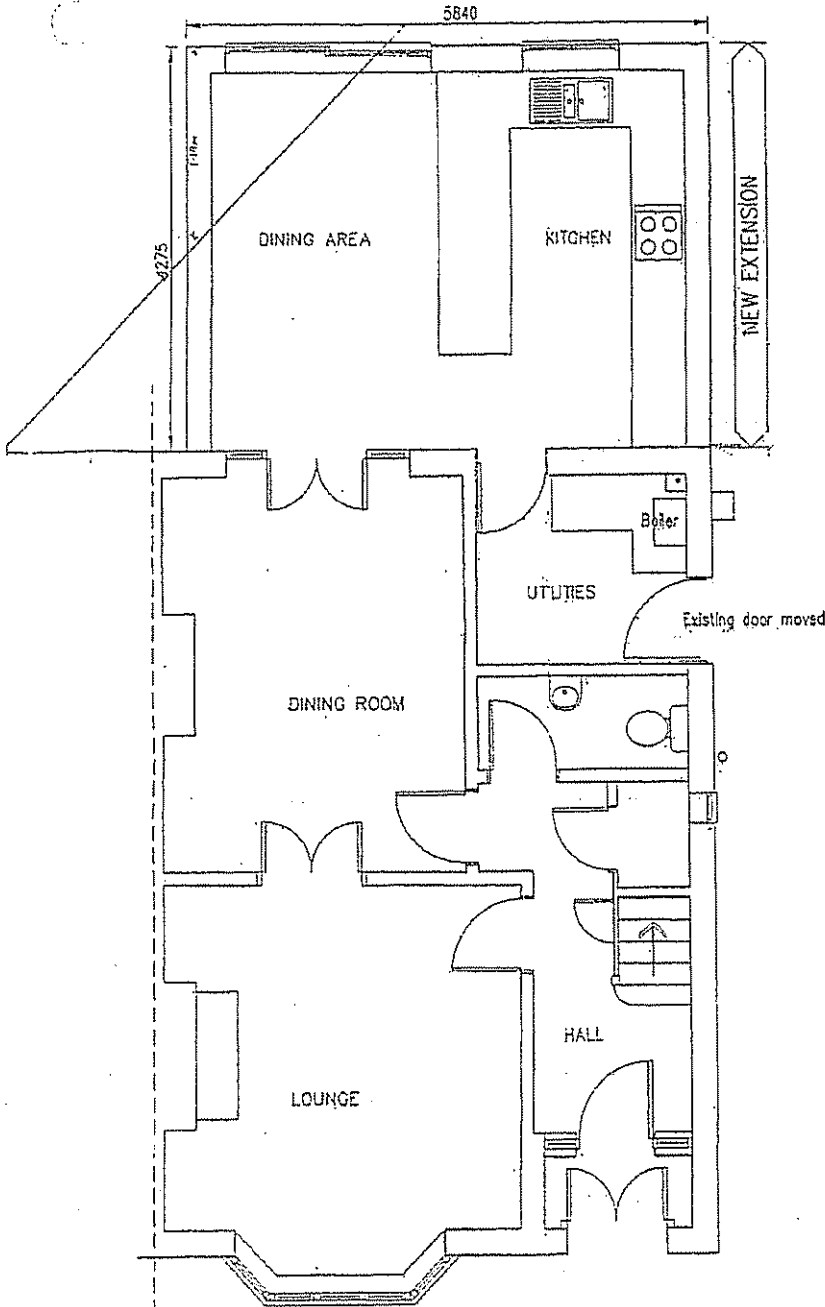


# FRONT ELEVATION



# REAR ELEVATION





GROUND FLOOR

10 JUN 2005  
05/956/FUL

CITY OXFORD  
Town & Country Planning Act  
Application \_\_\_\_\_  
Granted Permission 17 APR 2005  
PLANNING SERVICES  
N.B. This is not an approval under the Building Regulations or other legislation

Revision	Description

Revisions

Project REAR GROUND FLOOR EXTENSION  
3 REGENCY GARDENS, OXFORD