

21 January 2021

**Complaint reference:**  
19 014 684

**Complaint against:**  
Milton Keynes Council

## **The Ombudsman's final decision**

Summary: There was no fault by the Council in a complaint alleging fault because it made a material change to a neighbourhood plan through the Milton Keynes Plan without consultation and with no verbal or written justification.

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## **The complaint**

1. Mr X acts on behalf of himself and a group of local residents. Mr X complains the Council made a material change to a neighbourhood plan through the Milton Keynes Plan without consultation and with no verbal or written justification.
2. Mr X says there was fault by the Council because:
  - It trebled the density of the site contrary to the adopted neighbourhood plan.
  - It did not propose the change during the development of and consultation for the neighbourhood plan.
  - The change was not subject to public consultation.
  - The Council could not provide any verbal or written justification for the change

## **The Ombudsman's role and powers**

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

5. I examined the complaint and background information provided by Mr X. I discussed matters with Mr X. I made enquiries of the Council and considered its comments on the complaint. I sent a draft decision statement to Mr X and the Council and considered their comments on the statement.

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## What I found

6. Neighbouring planning is not a legal requirement but a right which communities in England can choose to use. Communities may decide that they could achieve the outcomes they want to see through other planning routes, such as incorporating their proposals into the wider Local Plan or through other planning mechanisms such as Local Development Orders, supplementary planning documents or through pre-application consultation on development proposals. A neighbourhood plan attains the same legal status as a Local Plan once it has been approved at a referendum.
7. Appendix A of the proposed Milton Keynes Local Plan initially stated there would be 25 new dwellings concentrated in two areas of the site. The Council put the Plan, including Appendix A, out for public consultation between October and December 2017.
8. The Council then submitted the Plan to the Planning Inspector for examination in March 2018. The Council submitted a document titled 'Plan:MK Proposed Submission Schedule of Proposed Main Modifications'. It also submitted a document titled 'Plan:MK Proposed Submission of Schedule of Proposed Additional Modifications'. The latter document proposed a change to Appendix A to increase the number of new dwellings in the area in question here to 80 in total.
9. The Council stresses these documents were laid before the Planning Inspector and were considered by him. It points out the Inspector asked for several of the additional modifications to be changed to main modifications. However, he did not ask for the capacity of the sites to be classed as main modifications.
10. The Council then prepared a final set of main modifications as well as additional modifications. It consulted on the main modifications between October and December 2018. It published the schedule of additional modifications but the additional modifications were not formally consulted upon. The Council adopted the Plan in March 2019.
11. The Council's website described the Local Plan process. It says:

"In addition to the main modifications, the Council also published a Schedule of Proposed Additional Modifications. Additional Modifications include corrections to typographical errors and updated factual information, and the schedule of additional modifications was published as part of the consultation for clarity and completeness. The additional modifications do not affect the soundness of the Plan and, as such, did not form part of the public consultation"

## Finding

12. The Council put the Schedule of Main Modifications and Schedule of Additional Modifications before the Planning Inspector. Plainly, the Inspector was aware of the documents.
13. I am concerned that a major change to the density of dwellings on the site was included in a document which the Council's own website describes as being used to make corrections to typographical errors and update factual information. Indeed, when reading through the Schedule of Additional Modifications, the observer will note the red lines denoting typographical errors and updates of information. A change in the density of the sites is more than just a typographical error.
14. Mr X asserts the Council should not have made a change to the number of dwellings on the site and without any consultation with residents. This is because

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there was an adopted neighbourhood plan. He sees the Council's action as separate from the Planning Inspector's examination of the Local Plan.

15. But it is not separable from the matter which was put before the Inspector. This is because the Council did not make the change in a different forum. It acted in the course of the Inspector's examination of the Local Plan.
16. I also note the area's neighbourhood plan did not have a legal status that meant the Council could not make changes to the number of proposed dwellings on the site in question. So, the Council could change the number of proposed dwellings when it drafted its Local Plan. It could have chosen to include the change in the Schedule of Main Modifications which would have had the benefit of public consultation on the change. It did not do so.
17. While I find the Council's decision to make a major change through the Schedule of Additional Modifications questionable, it was for the Planning Inspector to decide whether the change should have been moved to the Schedule of Main Modifications and so warrant further public consultation. The Planning Inspector's actions are beyond the scope of this investigation.

### **Final decision**

18. There was no fault by the Council in the matters raised here by Mr X.

### **Investigator's decision on behalf of the Ombudsman**