

OMBUDSMAN DECISIONS – 1 APRIL 2007 TO 31 MARCH 2008

| No. | Ombudsman main subject area | Details of complaint | Ombudsman decision | Date of decision | Notes |
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| 1 | Planning and building control | That the council failed to take timely and appropriate action to eradicate light pollution from a golf driving range. | Local settlement | 06.02.08 | <p>This complaint was about the time the council took to consider a request from objectors to issue a discontinuance order. The ombudsman concluded that there had been maladministration on the part of the council in the time taken to bring the issue before councillors, but discontinued his investigation on the basis that the council had agreed a local settlement.</p> <p>At its meeting on 30 June 2008, the audit and corporate governance committee considered a report setting out the ombudsman's findings. The committee agreed that the council had taken sufficient actions to ensure that such an event will not occur again.</p> |
| 2 | Planning and building control | <ul style="list-style-type: none"> • That the council failed to investigate and take enforcement action over breaches of planning control during the 2006 season of an open air music festival. • That the council failed to follow policies of non-disclosure of identity when making a report on breaches of planning control. • That the council failed to provide information about maximum permitted noise levels of music. • That the council failed to provide a specification of light plotting work and a site record | No maladministration | 16.07.07 | <p>This complaint relates to an open-air music festival that takes place opposite the complainant's property.</p> <p>The complainant claimed that:</p> <ul style="list-style-type: none"> • The council failed to take action, or list on its schedule, possible breaches of conditions of the planning permission. However, as the complainant also stated that it was impossible to make accurate records of those alleged breaches, the ombudsman said it was difficult to see how the council could be expected to investigate these matters reliably. • The council's enforcement report made the complainant's identity obvious, as well as repeating confidential requests she had made to the enforcement team. <p>The ombudsman did not agree and could find no evidence of fault by the council</p> <ul style="list-style-type: none"> • The council failed to answer her concerns about noise levels. <p>Whilst officers agreed the noise could be intrusive at times, in their opinion it did not amount to a statutory nuisance. The ombudsman</p> |

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| | | of hours worked. | | | <p>said that he could not criticise the professional judgement of officers unless he believed it to be utterly unreasonable. He concluded that he could not say that was the case in this instance.</p> <ul style="list-style-type: none"> The council did not provide a specification of light plotting work. <p>Officers distinguished the light plotting work, relating to the stage and auditorium, from the lighting of the garden and back-stage area. Whilst the council did receive complaints about light from the garden and back-stage area, it did not receive any complaints about the light plotting operation.</p> <p>Officers visited the complainant in response to her complaints about additional lighting that was not marked on the lighting plan and, whilst they did not consider the lights were unacceptably intrusive, they did draw the matter to the attention of the organisers.</p> <p>The ombudsman considered that officers had acted reasonably in drawing the organisers' attention to lights that did not feature on the lighting plan, and did not have any basis on which to question the professional judgement of officers when assessing the impact of the lights on the complainant's amenity. He also said that, as the complainant had not complained about the light plotting scheme, he found it difficult to say that she had been caused injustice because officers had not provided her with a copy.</p> <ul style="list-style-type: none"> That the council did not provide a site record of hours worked <p>Officers did not know of the existence of any site record.</p> <p>The ombudsman found no evidence of maladministration.</p> |

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| 3 | Planning and building control | <p>That the council:</p> <ul style="list-style-type: none"> • wrongly approved a planning application under delegated powers, so the complainant lost the opportunity to influence the planning committee • gave inadequate consideration to protection of the complainant's amenity in granting the permission, so disturbance from the development increased. | No maladministration | 23.05.07 | <p>This complaint relates to the open-air music festival referred to in complaint number two above.</p> <p>The council granted planning permission for 15 years for an open-air music festival in 2002. This consent allowed 20 performances each year.</p> <p>Officers granted a further planning permission, under delegated powers, in 2006 to vary the conditions of the 2002 consent to allow one more performance (and one fewer other event) each year. This consent included an additional condition to alter the rehearsal period. The condition stated that the rehearsal period should not start before the end of setting up. Previously the rehearsal period was restricted to a seven-day period before the first dress rehearsal. The complainant contended that the rehearsal period would start earlier than that, causing her more disturbance.</p> <p>The intention of the new condition was to ensure that the rehearsal period did not overlap with the setting-up period. The original condition relating to the rehearsal period still applied, so the rehearsal period was still seven days. Officers clarified this with the organisers, and the complainant, in May 2006, i.e. before rehearsals began for the 2006 season.</p> <p>The ombudsman considered that the council was correct to say that the 2006 planning application left all the conditions of the 2002 consent (other than the one specifically being varied by the application) unchanged. He therefore concluded that the decision to determine the application under delegated authority was not based on incorrect information and he did not uphold this part of the complaint.</p> <p>When determining the application, officers considered the impact of the proposal on the Green Belt, local traffic, trees and neighbour amenity and specifically included the additional condition to give greater protection to local amenity than that afforded under the 2002 condition.</p> <p>The ombudsman said that the council correctly consulted neighbours and the ward councillor on the application and took account of the</p> |

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| | | | | | <p>points raised in reaching a decision.</p> <p>The ombudsman concluded that there was no maladministration in the way the council granted the planning consent.</p> |
| 4 | Planning and building control | <p>That the council granted planning permission over the complainant's land, which would allow the receiver to sell off that land.</p> | No maladministration | 22.06.07 | <p>The receiver had possession of the complainant's property and applied for planning permission to change the use of some of the agricultural land in order to extend the gardens of two neighbouring properties. The complainant objected to the application, which officers approved under delegated powers in December 2006.</p> <p>The ombudsman's view was that, when determining the application, officers had taken account of the relevant planning policies and the objections they received.</p> <p>The ombudsman concluded that there had been no maladministration.</p> |
| 5 | Planning and building control | <p>That the council announced a proposal for the Didcot southern perimeter relief road but would not confirm:</p> <ul style="list-style-type: none"> • if the proposals would go ahead • any arrangements for compulsory purchase or compensation for the owners of affected properties. | No maladministration | 22.06.07 | <p>In March 2006 the South East Regional Assembly published the draft South East Plan for submission to the Government. Amongst other things, the plan set out the amount of housing provision that may be required up to 2026. The plan was subject to an examination in public (EIP) during 2006-2007.</p> <p>The council was required to provide further information on the level of housing provision and associated infrastructure, in conjunction with the Vale of White Horse District Council (VWHDC) and Oxfordshire County Council (OCC). The three councils therefore undertook a study of the Didcot area to advise on the split of the 3,000 dwellings between the two districts. As part of that study the councils commissioned a transport study. The study identified that the southern perimeter relief road may need to be extended in order to support the traffic generated by additional housing.</p> <p>Cabinet considered this study on 20.12.06 and resolved to request OCC to strongly advise the EIP Panel that there was unequivocal evidence from the transport studies that unless there was sufficient investment in the road infrastructure in and around Didcot none of the</p> |

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| | | | | | <p>additional housing was possible. Officers wrote to residents informing them of the proposals on 21.12.06.</p> <p>The ombudsman acknowledged that the council's announcement about the possibility of a relief road had caused distress and uncertainty to the complainant, but was satisfied that there was no evidence of maladministration or administrative fault on the part of the council.</p> |
| 6 | Planning and building control | <p>That the council:</p> <ul style="list-style-type: none"> • did not consider a development proposal adequately at the pre-application stage • did not answer the complainant's questions about why the proposal was unacceptable. | No maladministration | 31.01.08 | <p>The complainant planned to develop land at the rear of his property, which is a listed building. The complainant's agents had pre-application discussions with officers, following which officers provided detailed advice, but made it clear that the comments were not binding on the council.</p> <p>The agents submitted a planning application in January 2007, and officers notified neighbours and other consultees. One of those consultees was the council's conservation and design officer, who had not previously visited the site. She recommended refusal as, in her view, the development would harm the setting of the listed building. In addition, the application did not address several issues that officers had raised during the pre-application discussions. Officers also placed a tree preservation order on the orchard at the rear of the site, when they had not objected to the removal of the trees at the pre-application stage.</p> <p>The complainant subsequently withdrew the application prior to determination. He acknowledged that his agents had been at fault but complained that officers' pre-application advice about the trees had been misleading and that the conservation and design officer had not visited the site during the pre-application stage.</p> <p>Officers responded that the forestry officer who had originally commented on the proposal during the pre-application stage had not recorded his comments; the officer who considered the application was therefore unaware of the preliminary view. Officers accepted that this had caused inconvenience and upset to the complainant and offered compensation of £200. They also offered an informal meeting to</p> |

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| | | | | | <p>discuss the issues, but the complainant declined to accept.</p> <p>The complainant said he was also concerned about the quality and impartiality of officers' advice, and the relationship they appeared to have with the developer of adjacent land, after they suggested to the developer that he contact the complainant to discuss making a joint proposal. He also complained that officers told the developer that access to his plot was an issue, which they had not previously told him</p> <p>The ombudsman advised that a difference of professional opinion about the trees was not in itself maladministration, but the failure to keep a record was. However, he said that the offer of compensation was a fair remedy for the upset caused.</p> <p>The ombudsman said that the council's view prior to the submission of an application is never a guarantee that planning consent will be granted, and the council made this proviso in the advice officers gave to the complainant's agents. He could therefore not conclude that the council was at fault in this matter.</p> <p>Finally, the ombudsman was not persuaded that the council acted unreasonably in suggesting that the developer of the adjacent land might consider contacting the complainant. As far as access to the site was concerned, the ombudsman said that the council was unable to complete consideration of the application before the applicant withdrew it, and had since spent time investigating the issues raised in the complaint (and, by extension, the application itself). He said that the council had therefore not deliberately withheld information from the complainant, particularly as officers had stated that they were willing to discuss his proposal with him.</p> <p>The ombudsman concluded that, broadly, the council had not been at fault and, where there had been maladministration, the council had offered to compensate the complainant, so there was no injustice.</p> |

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| 7 | Finance | That the council wrongly considered the complainant's council tax account to be in arrears and failed to take into account that the complainant left the property in November 2006 when calculating his liability. | No maladministration | 26.06.07 | <p>The complainant bought a property in the district in 1999 and sold it in January 2007. Officers advised the complainant that he owed £328.65 in council tax payments for that property.</p> <p>Officers wrote to the complainant, and his MP, explaining the payments he had made and how much he owed. The ombudsman considered that the council had therefore made reasonable efforts to inform the complainant of the arrears. The ombudsman acknowledged that the complainant did not believe he owed the money, but could see no evidence to suggest that was the case. He said that it seemed from the correspondence that the complainant was disputing an overpayment of council tax benefit, and had appealed against this to the Independent Appeals Service. As the complainant had submitted the appeal, the ombudsman did not have the discretion to consider that part of the complaint.</p> |
| 8 | Finance | That the council failed to honour an agreement with the New Zealand High Commission to write off council tax arrears. | No maladministration | 19.02.08 | <p>The complainant was a New Zealand national whose immigration status did not allow her to seek employment or claim benefits. She accrued council tax arrears, which the council sought to recover.</p> <p>The New Zealand High Commission wrote to the council to ask for guidance on ways to resolve the matter. The complainant contended that the council agreed to write off the arrears but continued to pursue her for the debt, although she did not provide any evidence to support this.</p> <p>Officers confirmed that they received a letter from the New Zealand High Commission in November 2005, and agreed to consider if the complainant was entitled to receive council tax benefit. However, at no time did they agree to write off the debt, and there is no provision in the Local Government Finance Act 1992 to do so.</p> <p>The ombudsman said he had seen no evidence to suggest that the council agreed to write off the debt and therefore had no grounds to criticise it.</p> |

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| 9 | Other | That the council charged the cost of unblocking a private sewer to eight properties, when the cost should fairly be shared by more than 50. | Ombudsman's discretion | 22.06.07 | <p>The complainant lives on an estate of approximately 100 properties served by an unadopted sewer. Following a report of a blockage to the sewer near the complainant's property, the council served notice under Section 35 of the Local Government (Miscellaneous Provisions) Act on eight properties. The notice required the owner/occupiers of those properties to clear an obstruction to the private foul water sewer within four days, after which the council would undertake the work and split the cost equally between the eight properties. Officers included with the notice a covering letter explaining the process, together with a map showing the suspected location of the blockage.</p> <p>The complainant contacted the council and provided a more accurate map for future reference. Neither the complainant nor his neighbours carried out the work, or appealed against the notice, so officers subsequently arranged for the blockage to be cleared.</p> <p>Officers then discovered that the blockage was further downstream and therefore had the potential to affect more properties. However, they could only recharge the cost of the work to the eight properties they had served notice on. Officers therefore invoiced those eight properties for £18.42 each.</p> <p>The complainant contacted officers because he did not think it was fair that only eight properties shared the cost when more than 50 could be affected. Officers responded by saying that they had based their decision to serve notice on eight properties on information available to them at that time, but they would ensure that they served all future notices on all the properties affected. Officers updated their records to show the exact line of the sewer.</p> <p>The ombudsman said that, unless the council has the legal power to recharge the administrative costs of serving notice on a large number of properties, it was not a good use of its resources to write to 50 properties, if it was reasonably certain that only eight houses were affected.</p> <p>He concluded by saying that, in his view, the injustice was not so great that it could justify expenditure on investigating the matter further. He therefore discontinued his investigation and closed the complaint.</p> |
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| 10 | Planning and building control | That the chair of the planning committee conducted a meeting inappropriately, and an officer prejudged an application before receiving the parish council's input. | Ombudsman's discretion | 13.06.07 | <p>The complainant attended a planning committee meeting as an observer. He was unhappy at the way the chairman conducted the meeting. He also complained because a planning officer had advised an applicant that she was likely to refuse planning permission before she had received the parish council's views.</p> <p>Prior to submitting his complaint to the ombudsman, officers had considered the complaint under the council's complaints procedure. The complaint reached stage three of that procedure, i.e. for a panel of councillors to consider the complaint. There was a delay in convening a panel of councillors, primarily caused by the district council elections, and the panel met to consider the complaint on 07.11.07. Whilst the Panel did not find any evidence to substantiate all of the complaint, it did agree that some of the practices could give rise to a perception of bias or unfairness for those who do not regularly attend planning committee meetings. Although the running of the meeting reflected what the panel would expect it did acknowledge that some of the procedures required fine-tuning for the benefit of service users. The panel recommended a number of changes in practice to address those issues.</p> <p>The panel did find evidence to substantiate two aspects of the complaint and recommended two courses of action to address them.</p> <p>The ombudsman investigates complaints where maladministration by a council has caused injustice to the complainant. The complainant had attended the planning committee meeting as an observer because his son had submitted one of the planning applications; the ombudsman therefore stated that any injustice sustained would be by the complainant's son.</p> <p>The ombudsman concluded that the complainant had not sustained a personal injustice that he could investigate.</p> |
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| 11 | Other | That the council sought to charge the complainant for drain report work for which she was not liable. | Outside jurisdiction | 19.10.07 | <p>The complainant purchased a strip of land adjoining her property from the council. A private sewer serves her home and the transfer document for the strip of land states that the council reserved ownership of the drain passing through the land.</p> <p>In June 2006 the council served a Section 59 notice on local properties to replace, or repair, part of the sewer pipe. The notice included details of how to appeal against it. The complainant did not appeal against the notice and the council arranged for the work to be carried out and divided the cost equally between the owner/ occupiers of 26 properties, including the complainant.</p> <p>The complainant disputed the invoice because the council had reserved ownership of the drain beneath her land. Officers responded that ownership of the drain was irrelevant, as the cost of the work was shared among the properties served by the drain. They also pointed out that the complainant had had the opportunity to appeal against the Section 59 notice, but had not done so.</p> <p>Where a complainant has, or did have, an alternative way of remedying a complaint the ombudsman may not normally investigate it. In this case, the complainant had the opportunity to appeal against the Section 59 notice in court. The ombudsman's view was that it would have been reasonable for the complainant to do this, but she had not done so.</p> <p>As the complainant had the opportunity to resolve this matter in court, it was not a case the ombudsman could investigate.</p> |
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| 12 | Other | That the council failed to take action to control statutory noise and smell nuisance from the takeaway below the complainant's flat. | Outside jurisdiction | 10.10.07 | <p>The council received initial complaints about odour and fumes from the takeaway below the complainant's flat in 2005. Officers investigated the complaint and, after several attempts to resolve the problems informally, served an abatement notice. The council was due to take the owners to court, but they sold the business in January 2007. Officers could therefore not take any further formal action.</p> <p>A new food business opened in February 2007 and soon after this date the council received a complaint about odour and noise from the business entering the complainant's flat. Offices investigated the complaint and classed both the odour and noise as a statutory nuisance. The council served abatement notices on 02.07.07, which were not complied with. Officers again commenced the process of prosecuting the owners of the business for failing to comply with these notices; however, just before the case was due in court, the owner of the food business bought the flat from the complainant. As the complainant no longer affected by the nuisances, the council no longer had a case, and therefore dropped the prosecution. Officers have advised the owner of the business that, if the council receives new complaints, it will re-open the case.</p> <p>The complainant requested a council tax revaluation and refund because he had been unable to live in his flat. Officers granted an uninhabitable exemption for 12 months, which is the maximum allowed by law, but were unable to issue a refund because no further reductions could be given. The complainant applied for a county court judgement against the council and was successful; however, the papers had not been served on the council and it could not defend its case. When the council received notice of the judgement it appealed for the decision to be set aside, which was granted by the court. The complainant never re-applied to the courts for a judgement</p> <p>The ombudsman is prevented by law from investigating a complaint where the complainant has already tried to remedy it in a different way. As the complainant had already taken the council to court, the ombudsman could not take any action.</p> |
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| 13 | Planning and building control | That the council acted with maladministration in considering a planning application and opposing the subsequent appeal. | Outside jurisdiction | 27.11.07 | <p>The complainant submitted a retrospective planning application to change the use of agricultural land to leisure and recreational activities, i.e. the playing of golf and associated activities. Planning committee refused the application on 23.06.04. The applicant subsequently submitted an appeal against that decision, which was upheld on 10.07.07.</p> <p>The applicant contended that the success of his appeal indicated that the council had acted wrongly when considering his application and had spent money unnecessarily in defending its decision at the inquiry.</p> <p>By law, the ombudsman cannot investigate a complaint where the complainant has already used another means to remedy it. As the complainant had won his appeal against the refusal of planning permission, the ombudsman could not investigate it.</p> <p>The complainant also argued that officers had been guilty of maladministration during the processing of the application and that remained valid regardless of the outcome of the planning application. However, the ombudsman can only investigate complaints of maladministration causing injustice. In this case, the substantive injustice was the refusal of planning permission. As this had been remedied by the upholding of the appeal, the ombudsman could not investigate it.</p> |
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