

# Audit and Corporate Governance Committee Report

Report of: Head of Planning

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To: Audit & Corporate Governance Committee

DATE: 28 September 2010

## AGENDA ITEM 14

## Ombudsman Complaint

### Recommendation(s)

Audit and Corporate Governance Committee is asked to consider and comment on

- (a) the finding of maladministration by the Local Government Ombudsman in relation to a complaint about the processing of a planning application, and
- (b) the systems put in place to ensure such maladministration is not repeated in the future

### Purpose of Report

1. To advise the Audit and Corporate Governance Committee of the findings of the Local Government Ombudsman following an investigation into a complaint about the processing of a planning application. Audit and Corporate Governance Committee has responsibility for the overview of Ombudsman complaints. As such this report sets out the findings of the Ombudsman, the management response and the level of award agreed. The report provides the committee with assurances that systems are in place to ensure such maladministration is not repeated in the future.

## **Background**

2. The council has recently received a report by the Local Government Ombudsman following an investigation into a complaint about the processing of a planning application that was submitted in 2006. The Ombudsman found maladministration on five counts and concluded injustice had been caused to the complainant.

## **What happened**

3. In October 2006 the Planning Committee considered planning application P06/E0855/RET and members resolved to grant approval subject to conditions. The application sought retrospective permission to retain a dwelling as built which did not accord with previously approved plans. Prior to the release of the decision notice representations were received from solicitors acting for the complainants. These alleged that the Committee's decision was based on misinformation, was thus legally flawed and susceptible to judicial challenge. In the light of these representations the content of the application and the original report to the Planning Committee were thoroughly reviewed. Errors were discovered and, as a result, the decision notice was not issued.
4. After a thorough investigation into the errors and the reconsideration of the application by a more senior officer a revised report was taken back to the Planning Committee. The first section of the report addressed the errors that had been found and second section comprised a fresh report setting out the material planning issues. After a second site visit the Planning Committee resolved to grant planning permission. After the decision notice was released the Strategic Director for Planning wrote to the complainants apologising for the errors that had occurred and thanking them for bringing the matters to the council's attention. The complainants remained unhappy with the manner in which the council had dealt with their concerns and the final decision to grant permission. Having exhausted the council's complaint procedure the complainants asked the Local Government Ombudsman to investigate.

## **How the problem was corrected**

5. Following the complainant's threat of a judicial review in October 2006 officers undertook a full investigation into all the concerns raised. This involved officers at a senior level, including the planning service's Strategic Director and members of legal services. Once alerted to seriousness of the issues being raised the Head of Planning took the decision not to issue a decision notice in October 2006 and the case officer ceased to have any further involvement in the case. The complainants were invited to discuss their concerns with the Head of Planning and provided with the opportunity to comment two drafts of the revised reports. The full review culminated in officers taking a detailed report back to the Planning Committee which included a section setting out all the errors that had been found. A second site visit was arranged to ensure the committee members had the benefit of seeing the development and its relationship with the complainant's property. It is pleasing that the Ombudsman applauded the manner in which the council engaged the complainants after the mistakes were discovered and that the final decision to

grant planning permission was found to have been made without maladministration.

6. Senior officers also thoroughly reviewed the service's internal policies and procedures that had allowed the errors in the case to go undetected. Relevant procedures were clarified and amended in order to minimise the risk and these have included:-
  - Briefing officers on the errors that occurred
  - Reminding officers of the need to seek expert help with site levels where appropriate
  - Introducing a new system to log and discharge conditions
  - Clarifying internal procedures for the signing off of planning committee reports
  - Introducing new enforcement procedures
  - Introducing new non material and material minor amendment procedures
  - Introducing a validation checklist for full applications requiring the submission to be of a higher quality and include sections and a site survey in this type of case
  - Producing a series of standard operating procedures

### **The complainants' approach**

7. The complainants' main concerns were that their objections to the 2006 application were not properly addressed, the council had ignored its own policies, it had failed to meet procedural requirements and supported an application that was at odds with adopted policies.
8. The majority of the complainants' objections relating to the handling of the application up to October 2006 were addressed in the first part of the report to the Planning Committee in March 2008. Their specific objections to the merits of the planning application were addressed in the second part of the report.
9. The complainants elected to seek both legal and planning advice. The ombudsman acknowledged that the public do not normally need the assistance of legal and planning experts but the council's failings had given rise to an understandable and reasonable view that more expert assistance would be required in this case. The Ombudsman's office has indicated that the complainants claim the costs they have incurred in employing a solicitor, counsel and a planning expert exceed £30,000. However the Ombudsman's view was that the level of engagement was over and above what was necessary to demonstrate faults in the processing of the application. Hence her recommendation was that the council only makes a contribution to part of the complainants' costs. The Ombudsman's office provided a breakdown of the costs associated with stopping the decision notice being issued in October 2006, commenting on the revised report and having a professional planning agent present at the second Planning Committee meeting. The figures supplied exceed the £5000 payment that the Ombudsman recommended.

## **The handling of the complaint and offer made**

10. The Council acknowledged that the action taken by the complainants led to the decision notice not being issued following the Planning Committee meeting on 11 October 2006. This avoided a decision being issued that could have been susceptible to a judicial review.
11. In recognition that errors had been made a formal apology was made to the complainants in April 2008 and this was accompanied by an offer of £800 in recognition of the time and trouble that they had incurred. The complainants responded by stating not all aspects of their complaint had been addressed and by indicating that it was their intention to take the matter further.

## **The Ombudsman findings and recommendations**

12. The Ombudsman found maladministration causing injustice based on five failures. These comprise the failure to:-
  - Record a datum point for levels agreed with an officer on site.
  - Ensure that appropriate plans were submitted in accordance with earlier conditions.
  - Notify the complainants of a request for a minor amendment to a 2003 planning application.
  - Publicise an application as a departure from the South Oxfordshire Local Plan.
  - Correctly report information to councillors in October 2006.

In order to remedy the injustice caused to the complainants the Ombudsman recommended that

- An apology was given to the complainants.
  - £5000 was paid as a contribution to the costs they incurred in taking professional advice which led to the Council reviewing its original decision.
  - £500 was paid as a contribution as the complainant's time and inconvenience in making a complaint to the council and the Ombudsman.
  - The council should review its procedures to prevent such a situation occurring again.
13. The Chief Executive has sent a formal apology to the complainants together with the recommended payments. As detailed under paragraph 7 the relevant procedures have already been thoroughly reviewed, amended and updated in order to ensure the same mistakes could not be repeated.

## **Authority to determine level of award**

14. In terms of this issue the Chief Executive has delegated authority to authorise local settlements (delegation 2.1 on page 29 of part 3) under S92 LGA 2000, which says:

*Where a relevant authority consider -  
(a) that action taken by or on behalf of the authority in the exercise of their functions amounts to, or may amount to, maladministration, and*

*(b) that a person has been, or may have been, adversely affected by that action, the authority may, if they think appropriate, make a payment to, or provide some other benefit for, that person.*

15. The compensation payment has been funded from the planning revenue budget.

## **Conclusion**

16. The council has acknowledged that mistakes were made during the processing of the planning application P08/E0855/RET. The Ombudsman has found the council guilty of maladministration on five counts that occurred before or during October 2006 and concluded that these matters led to injustice. Your officers are satisfied that steps have been taken in relation all five areas of concern and measures have been put in place that would ensure such a situation could not be repeated. The Ombudsman recommended that the council pays a contribution towards the complainants' professional costs of £5000 and pays a further £500 for the time and inconvenience in making a complaint to the council and Ombudsman. Having had the benefit of a breakdown of the significant costs incurred by the complainants the Chief Executive considered the recommended compensation to be reasonable. He has sent a formal apology to the complainants together with the recommended payment.

## **Background Papers**

- Ombudsman's report into complaint no 08 015 461 dated 28 July 2010
- Planning Application P06/E0855/RET and the report to Planning Committee dated 19 March 2008