

BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE

23RD SEPTEMBER 2009

OMBUDSMAN REPORT INTO MALADMINISTRATION

Responsible Portfolio Holder	Councillor Geoff Denaro
Responsible Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services
Non-Key Decision	

1. SUMMARY

- 1.1 On 30th June 2009 the Local Government Ombudsman issued a Report on investigation 07B13686 relating to a decision of the Planning Committee to grant planning permission for an affordable housing scheme. The Report found that there had been maladministration by Members of the Planning Committee in the way the decision had been taken. This matter has already been reported to Full Council.

2. RECOMMENDATION

Members are asked to approve the following recommendations:-

- 2.1 To note the contents of this report.
- 2.2 If appropriate, to make any recommendations arising out of the issues addressed in the Ombudsman's Report to Full Council.

3. BACKGROUND

- 3.1 In March 2008 a local resident complained to the Local Government Ombudsman regarding a decision made by the Planning Committee in September 2007 to approve an application for planning permission for 20 affordable houses. He also complained that a petition regarding the development signed by local residents had been given to a Member of the Council but had not been passed on to the planning Department.
- 3.2 The site of the development was in the Green Belt. The officer recommendation was for refusal based on a number of issues including Green Belt policy, wildlife habitat, tree cover preservation and inadequate evidence of housing need in the locality of the site. Members voted to approve the application against officer advice.
- 3.3 The Ombudsman investigation involved an examination of all the relevant Council records, including the production of a transcript of the Planning

Committee Meeting and checking all the Council files. Officers were interviewed together with all the Councillors on the Committee who had voted to approve the application and the Councillor who was said not to have passed on the petition. After a long delay the decision of the Ombudsman was issued on 30 June 2009 and a copy of his Report is attached at Appendix 1. Please note that the Report uses anonymous names and locations to preserve the confidentiality of the Members and complainant.

- 3.4 Members will see that the Ombudsman makes 5 specific findings of maladministration regarding the Members of Planning Committee as follows:-
- i. Members placed too much weight on the land at the site being undeveloped leading them to take this into account when it was an irrelevant factor.
 - ii. Members failed to distinguish between housing demand and housing need.
 - iii. Members failed to consider adequately the impact of the development on wildlife habitat/ protected species.
 - iv. Members failed to consider adequately the advice of the Tree Officer.
 - v. Members failed to give adequate reasons for their decision.
- 3.5 There was an additional finding that failure by the Member concerned to pass on the resident's petition, before the planning decision was taken, was maladministration likely to cause outrage to the signatories. The Report also noted that the petition did not refer to a material planning consideration that would allow the Council to refuse the application. Members are referred to paragraph 3.11 below which sets out further information relating to petitions.
- 3.6 It is important to note that the Ombudsman recognises that this was a decision which was within the powers of the Council to make, or in other words that the Council was not acting outside its powers in approving the scheme. It was more the lack of proper detailed consideration of the issues at the site, and the failure to give adequate reasons which resulted in the finding of maladministration.
- 3.7 To put the finding into a wider context, this is the first time that the LGO made a finding of maladministration and issued a Report to the Council since 2004. The issue of affordable housing is a problem for all Councils but particularly those located in the Green Belt. The report is now a public document and in one sense the contents of it will be valuable to other Councils who face similar difficult decisions of balancing the need for affordable housing against the duty to preserve the Green Belt.
- 3.8 The Ombudsman has recommended that a compensation payment be made to the complainant of £1000 to reflect the injustice caused by the

maladministration and the time and trouble taken by him to make his complaint.

- 3.9 The current position is that the Ombudsman Report was considered by Full Council on 9th September. This was necessary under the relevant legislation to enable the report to be noted by Full Council and for the compensation payment to be approved. The recommendations for noting and payment of the compensation were approved and the plans for training to address the issues raised by the report, and for the future handling of petitions were also noted by Full Council.
- 3.10 With reference to training the position is that officers from legal and planning are in the process organising a de-brief/ training session for Members of the Planning Committee. The session will concentrate on the learning points coming out of the Ombudsman's Report. The aim will be to ensure that through advice and training, and changes to procedures where necessary, that the same mistakes will not be repeated on future applications. For example the system of giving reasons on officer overturn decisions has already been amended to ensure that Members address all the headings under which objections have been identified.
- 3.11 Since the original report to Council was drafted that have also been further developments in that officers have been in contact with the assistant Ombudsman David Pollard regarding additional training. It has been agreed (dates to be confirmed) that in addition to the training referred to in 3.10 the Ombudsman team will also attend at the Council House to do a training session for all Members on the work of the Ombudsman generally and with a second presentation specifically relating to planning issues.
- 3.12 With reference to petitions, which Members will note were also an issue in this matter, there is currently legislation before Parliament which will place a requirement on Councils to develop a petition scheme (The Local Democracy, Economic Development and Construction Bill). Pending implementation of the new legislation the Council will manage the receipt of petitions as follows:-
- As approved by Members at Full Council on 29th April, the Joint Overview and Scrutiny Board has been given responsibility for receiving resident's petitions.
 - As an extra check, to ensure that petitions relating to regulatory matters (planning and licensing applications) are allocated to the correct department, all staff and Members have been instructed to pass any petitions received to the Monitoring Officer.
- 3.13 As Members can see, a number of steps have been taken both through planned training and changes to procedures to address the points arising out of the maladministration finding. However, the Standards Committee retains the ability to make additional recommendations as to actions needed

should it be of the view that there are any further measures which should be looked at.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising out of this report, other than the recommendation that £1000 be paid as compensation to the complainant. In the wider sense it is important that Members learn from the mistakes identified by the Ombudsman in order to avoid placing the Council at risk of having to make other compensation payments in the future.

5. LEGAL IMPLICATIONS

- 5.1 There are no legal implications arising out of this report, save for the need for the findings of the Ombudsman to be considered by the Council as referred to in paragraph 3.9 above. Once this has been done and the payment of compensation authorised the Council is required to officially report back to the Ombudsman to confirm that it has considered the report and agreed to implement the findings. At that stage the LGO will formally confirm that it is satisfied and take no further action.
- 5.2 As regards the legal status of the decision made to grant planning permission to the scheme, this is not affected by the finding of maladministration made by the LGO. The Ombudsman does not have the legal authority to overturn decisions made by any local authority. The decision could only be overturned by legal action taken against the Council for judicial review.

6. COUNCIL OBJECTIVES

- 6.1 This report does not link directly to Council objectives.

7. RISK MANAGEMENT

- 7.1 The main risks associated with the details included in this report are:

- *Risk of the Council being found to have caused maladministration on a future planning application.*

- 7.2 These risks are being managed as follows:

- As referred to in paragraphs 3.10 and 3.11 officers will be organising a training/learning session for Members based on the findings in the report and additional training by the LGO. In addition officers will consider making changes to the planning process to reflect the learning points where necessary.
- More generally, the risk will also be managed by the on-going training of Members through the Member Development programme.

8. CUSTOMER IMPLICATIONS

8.1 There are therefore no direct customer implications.

9. EQUALITIES AND DIVERSITY IMPLICATIONS

9.1 There are no implications for Equalities and Diversities arising out of this report.

10. VALUE FOR MONEY IMPLICATIONS

10.1 There are no value for money implications.

11. OTHER IMPLICATIONS

Procurement Issues None
Personnel Implications None
Governance/Performance Management The finding of maladministration will be recorded on the Council's annual LGO statistics for 09/10
Community Safety including Section 17 of Crime and Disorder Act 1998 None
Policy None
Environmental None

12. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	Yes
Chief Executive	No
Executive Director - Partnerships and Projects	<u>No</u>
Executive Director - Services	<u>No</u>
Assistant Chief Executive	<u>No</u>
Head of Service	<u>Yes</u>
Head of Financial Services	<u>No</u>

Head of Legal, Equalities & Democratic Services	<u>Yes</u>
Head of Organisational Development & HR	<u>No</u>
Corporate Procurement Team	<u>No</u>

13. WARDS AFFECTED

All wards.

14. APPENDICES

Appendix 1 Report of an Investigation into complaint no 07B13868 against Bromsgrove District Council

15. BACKGROUND PAPERS

None

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