

# Performance and Audit Scrutiny Committee



<b>Title of Report:</b>	<b>Decision relating to complaint to Local Government Ombudsman</b>	
<b>Report No:</b>	<b>PAS/FH/18/010</b>	
<b>Report to and date:</b>	<b>Performance and Audit Scrutiny Committee</b>	31 January 2018
<b>Portfolio holder:</b>	Councillor Lance Stanbury Portfolio Holder for Planning and Growth <b>Tel:</b> 07970 947704 <b>Email:</b> <a href="mailto:lance.stanbury@forest-heath.gov.uk">lance.stanbury@forest-heath.gov.uk</a>	
<b>Lead officer:</b>	David Collinson Assistant Director (Planning and Regulatory Services) <b>Tel:</b> 01284 757306 <b>Email:</b> <a href="mailto:david.collinson@westsuffolk.gov.uk">david.collinson@westsuffolk.gov.uk</a>	
<b>Purpose of report:</b>	To inform the Committee of the details of a complaint the Local Government Ombudsman received in relation to the overall way the Local Planning Authority communicated with Ms X about a neighbouring planning development.	
<b>Recommendation:</b>	<p>It is <b>RECOMMENDED</b> that the Performance and Audit Scrutiny Committee:</p> <p><b>Note</b> the action taken by the Assistant Director (Planning and Regulatory Services) to remedy the findings of the Local Government Ombudsman following a complaint made to him in relation to the overall way the Local Planning Authority communicated with Ms X about a neighbouring planning development.</p>	

<b>Key Decision:</b> <i>(Check the appropriate box and delete all those that <b>do not</b> apply.)</i>		<i>Is this a Key Decision and, if so, under which definition?</i> Yes, it is a Key Decision - <input type="checkbox"/> No, it is not a Key Decision - <input checked="" type="checkbox"/>	
<b>Consultation:</b>		Local Government Ombudsman	
<b>Alternative option(s):</b>		<ul style="list-style-type: none"> <li>• Do nothing.</li> <li>• Accept the findings of the Local Government Ombudsman (LGO).</li> </ul>	
<b>Implications:</b>			
<i>Are there any <b>financial</b> implications? If yes, please give details</i>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • The budget of £400	
<i>Are there any <b>staffing</b> implications? If yes, please give details</i>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • Internal resources dealing with the complaint.	
<i>Are there any <b>ICT</b> implications? If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> •	
<i>Are there any <b>legal and/or policy</b> implications? If yes, please give details</i>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • Providing advice on the options and actions being considered	
<i>Are there any <b>equality</b> implications? If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> •	
<b>Risk/opportunity assessment:</b>		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
<b>Risk area</b>	<b>Inherent level of risk</b> (before controls)	<b>Controls</b>	<b>Residual risk</b> (after controls)
Not to comply with the LGO suggest remedy	High	Comply with the LGO remedy	Low
Reputational Challenge	High	Comply with the LGO remedy	Low
<b>Wards affected:</b>		All	
<b>Background papers:</b>		Local Government Ombudsman Complaint reference: 16 018 773	
<b>Documents attached:</b>		None	

## **1. Key issues and reasons for recommendation**

### **1.1 Context**

- 1.1.1 As councils, we always endeavour to provide our services to the highest standards, ensuring our customers receive the service they would expect. However, periodically, in a small number of cases, things can and do go wrong and wherever that is the case, we seek to take appropriate remedy to redress the situation.
- 1.1.2 As part of the balanced scorecard reviews, the Performance and Audit Scrutiny Committee receive reports on the general numbers of complaints and compliments upheld. The Committee also has responsibility for receiving complaints that have been upheld by the Local Government Ombudsman (LGO).
- 1.1.3 Where someone is dissatisfied with the service provided by the Council, they may submit a complaint which is dealt with through the standard corporate process. If they are unhappy with the response, this will be referred to the Council's legal team, who will then provide an independent perspective on the matter. If they wish to pursue their complaint further, then they are entitled to refer the matter to the LGO.
- 1.1.4 Each year, the Council is provided a report by the LGO on the number of complaints it has received and upheld. Whilst the LGO provides cumulative statistics across all Councils, it does not provide averages and as such it is difficult to compare our performance against others. However, across both Councils, approx. 2,500 planning applications are received each year, and 8 complaints were made to the LGO; 3 of these were upheld (0.0001%). In total, 7 complaints across all services were made to the LGO in respect of Forest Heath, and no complaints were upheld.

## **2. Summary of the Complaint**

- 2.1 Ms X complained about the Council's process for granting planning permission for the development of the property next door to her. Specifically, she complains that:
- The Planning Officer assigned to the case told her there would be no window on the side of a new part of the building facing her, and therefore no overlooking, but this turned out to be incorrect;
  - The Planning Officer's report for the Delegation Panel contained errors which resulted in it being approved at that stage rather than going to the full planning committee for consideration;
  - The Planning Officer did not properly consider matters such as the visual appearance of the development, parking and its visibility from the road; and
  - Her complaint about these issues was poorly handled by the Council. Even though the Council has admitted some of the delays were unacceptable Ms X believes the financial remedy it offered was

3. inadequate.

### **Overlooking**

3.1

With regard to the issue of overlooking, the LGO states that there is no independent evidence to prove what exactly was said to Ms X. However, a Planning Officer must ensure that whatever he says can be easily understood by a member of the public seeking advice, as they are unlikely to be a professional trained in planning matters.

3.2

As a result of Ms X's complaint the Council secured an obscure film for the top part of the window. The LGO understands that Ms X was not happy with the use of film. She said it could be easily removed. However, obscured glass could also be replaced with clear glass with little difficulty. She also believes that when the Council has asked her to report any breaches to this condition it is moving its responsibility for planning enforcement to the public. The LGO disagrees. Councils run the planning system and should give due consideration to any breaches they become aware of. It would be completely unreasonable, however, to expect them to check every property where planning conditions apply. A council can expect concerned members of the public to report issues to it for further investigation.

4.

### **Delegation Panel**

4.1

Ms X says the report presented by the Planning Officer to the Delegation Panel contained inaccuracies. She is also unhappy that representations made by the town council were not considered. She says this resulted in it being decided by the Delegation Panel than sent to the full planning committee to decide the application.

4.2

The LGO stated that there is no evidence of fault by the Council here. The town council's objection to the application is what caused the Delegation Panel to become involved, so its representation was clearly taken into account. It was open to the local member of the Council to attend to make further representations but they did not. The application was then decided by it in accordance with the process provided by the Council's constitution.

5.

### **Consideration by the Planning Officer**

5.1

In her complaint to the Ombudsman Ms X writes in some detail about her concerns with illegal parking, the visual appearance of the building and which road visibility should be judged from. She does not believe they were given proper consideration and does not agree with the conclusions of the Planning Officer.

5.2

The Council says that all of these matters were considered and addressed in the Delegation Report. It mentions specifically the objections made by English Heritage about the visual appearance of the extension. A copy of the Delegation Report is publicly available on the Council's website.

5.3

Although it is clear Ms X disagrees with the findings of the Planning Officer and the Delegation Panel, that feeling alone does not create a significant personal injustice to her. I will not investigate further whether there was fault in this instance as there is no likelihood any significant personal

6. injustice could have been caused to Ms X by the Council's actions.

**Complaint Handling**

6.1

Ms X says that she first made a formal complaint to the Council about its handling of the planning application in January 2017. She did not receive a response until June 2017 and then only after she had brought her case to the Ombudsman. The Council told the Ombudsman it had replied to Ms X before realising it had not.

6.2

Ms X points out the Step 1 complaint response she received from the Council directs her to a website for more information on continuing to Step 2 of the complaints process. When Ms X did this she says the website simply directed her back to her Step 1 response without any further information being provided. I checked this and the same issue still exists.

6.3

The Council recognises that its delayed response to Ms X's Step 1 complaint was 'unacceptable'. It normally aims to deal with complaints within 20 days. It says it addressed this in its Step 2 response to Ms X, when it apologised and offered her a remedy of £150.

6.4

Given the lack of confidence Ms X understandably already had in the Council, it is unfortunate that its response to her initial complaint was so slow and the Ombudsman had to become involved at an early stage. The delay in replying only worsened the existing uncertainty and stress the Council was causing her. It also put her to unnecessary time and trouble in pursuing her complaint.

6.5

In considering an appropriate remedy I believe it is important to look at the totality of the Council's fault and the injustice caused to Ms X. If the Council's communication had been better at all stages the injustice caused would clearly have been avoided. The remedy I recommend below therefore incorporates the £150 already offered to Ms X by the Council.

7.

7.1 **Agreed Remedy**

7.2 The Council has agreed, within one month of my final decision, to pay Ms X a remedy of £400.

7.3 The Council has agreed, within one month of my final decision, to address the issue with its Step 1 letter and the website it links to so much clearer information is provided to complainants about making a Step 2 complaint.

8. The Council should update the Ombudsman when these actions are complete.

8.1

**Final decision**

There was fault in the overall way the Council communicated with Ms X about a neighbouring planning development. This caused her avoidable stress and uncertainty. The Ombudsman has recommended the Council make a payment to Ms X to remedy this.

## **Outcome/Update**

**The Council has clarified the complaints procedure for Step 2 on its letters and website. The Council has written to Ms X offering a further apology and has paid her £400 compensation in relation to the stress and uncertainty she has suffered.**

**In addition, discussions have been held with planning officers to ensure they are clear about the advice given to members of the public about planning applications over the telephone. New procedures have also been put in place internally to ensure that complaints are addressed promptly within the department.**