

Performance and Audit Scrutiny Committee



St Edmundsbury
BOROUGH COUNCIL

Title of Report:	Decision Relating to Complaint to Local Government Ombudsman	
Report No:	PAS/SE/18/008	
Report to and date:	Performance and Audit Scrutiny Committee	31 January 2018
Portfolio holder:	Councillor Alaric Pugh Portfolio Holder for Planning and Growth Tel: 07930460899 Email: alaric.pugh@stedsbc.gov.uk	
Lead officer:	David Collinson Assistant Director (Planning and Regulatory Services) Tel: 01284 757306 Email: david.collinson@westsuffolk.gov.uk	
Purpose of report:	To inform the Committee of the details of a complaint the Local Government Ombudsman received in relation to the Local Planning Authority failing to notify Mr X about two planning applications and failing to keep Mr X updated on some of the actions it was taking.	
Recommendation:	<p>It is RECOMMENDED that the Performance and Audit Scrutiny Committee:</p> <p>Note 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 Planning Authority's lack of consultation relating to two applications and failure to keep the complainant updated.</p>	

Key Decision: <i>(Check the appropriate box and delete all those that do not 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"/>	
Consultation:		Local Government Ombudsman	
Alternative option(s):		<ul style="list-style-type: none"> • Do nothing. • Accept the findings of the Local Government Ombudsman (LGO). 	
Implications:			
<i>Are there any financial implications? If yes, please give details</i>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • The budget of £400	
<i>Are there any staffing 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 ICT implications? If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> •	
<i>Are there any legal and/or policy 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 equality implications? If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> •	
Risk/opportunity assessment:		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (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
Wards affected:		All	
Background papers:		Local Government Ombudsman Complaint reference: 16 019 067	
Documents attached:		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, 12 complaints were made in respect of all St Edmundsbury services last year, of which 3 were upheld; as the faults were minor, a remedy was only deemed necessary in one case.

2. Summary of the Complaint

2.1.1 Mr X's family own a property that was, until 2004, part of an operational farm. The farm included a farmyard with two barns which Mr X's family sold in 2004. The Council had granted planning permission for a change of use of the barns to office use but this had not been implemented.

2.1.2 In July 2014 the owners of the barn (hereafter referred to as the applicants) submitted a prior approval application to the Council. The application sought permission to convert the barns into two dwellinghouses and for associated works. The applicants' agent had previously worked for the Council.

2.1.3 The Council notified Mr X's family and the parish council. Mr X's family objected to the application saying it would be detrimental to the amenity of their property. The parish council also objected saying a change to office use would be more beneficial for the area or conversion into three dwellinghouses would be more in keeping with the character of the area.

2.1.4 The Council's planning officers produced a report on the application. The report explained the Council's view that the proposal would not adversely harm the

amenity of Mr X's family's property. However, the Council concluded that prior approval would be required to consider possible contamination at the site.

2.1.5 A further prior approval application was submitted for the same proposal in December. Neither the parish council nor Mr X's family were notified about the application. Mr X says his family would have objected to the application on the same grounds as the earlier application saying that it would be detrimental to the amenity of their home.

2.1.6 The Council considered the application and decided to give the proposal conditional prior approval.

2.1.7 In March 2015 the Council received a planning application for the site seeking a change of use of the land from agricultural to domestic use. Mr X's family were not notified about the application.

2.1.8 The Council considered the application and granted conditional planning permission.

2.1.9 Mr X learnt about the latter two applications for the site in February 2016. He contacted the Council to discuss his concerns. Mr X instructed legal representatives to assist him in this matter. They wrote to the Council setting out concerns about the Council's decision that the barns met the criteria set out in Class Q of the legislation. They said the barns had not been in agricultural use since 2005. They also said the total floor area of the two barns might exceed the 450 square metre limit set out in the legislation. They said this was supported by discrepancies in plans submitted with the applications in 2004 and 2010.

2.1.10 Correspondence between the Council and Mr X and his representatives ensued. During this time concerns were reported to the Council that works at the site included new structural elements that indicated the barns were not being converted but rebuilt contrary to the permission granted. Mr X's family also supplied affidavits regarding the use of the barns. The Council undertook to investigate these concerns and those set out above as part of an enforcement investigation. Mr X and the applicants had the opportunity to supply information.

2.1.11 Following its investigation, the Council concluded that the storage of items in the barns did not represent a material change of use and therefore the last use of the barns was agricultural. It also decided the area of the barns did not exceed 450 square metres.

2.1.12 The Council also considered the issue of the works at the site. It concluded that, although additional steel supports had been added to the barns, these did not constitute development. Further, even if they were considered development, the supports did not alter the external appearance of the barns and so would not represent a breach of the regulations. The Council sent a report of its findings to Mr X's representatives.

2.1.13 Mr X's and his representatives disagreed with the Council's conclusions and reiterated their earlier views and provided examples of similar cases supporting their view. They also provided new evidence of possible breaches at

the site to the Council.

2.1.14

In response the Council instigated a further enforcement investigation. This included a meeting in September with Mr X and various council officers including the enforcement officer and head of planning. There are no minutes of the meeting. Mr X says the Council undertook to speak with the applicants to see if measures could be implemented to reduce the impact of the development on his family's property. The Council also agreed that it had not met its obligations regarding the notification of the later two applications for the site. It had not previously admitted this failing. A letter sent to Mr X in September acknowledged this failure in writing and, following a discussion with the Ombudsman, the Council offered Mr X £400 in compensation for the loss of opportunity to comment. Mr X did not accept the offer.

2.1.15

Meanwhile the Council continued to investigate enforcement matters. It visited the site, sought information from the applicants and from engineers. In November the Council set out its findings in a report sent to Mr X's representatives. The Council concluded that works at the barn did not constitute a breach of the planning controls. It explained that the engineers' report it commissioned did not find the barns were unsuitable for conversion or that they were structurally unsound. It also explained the guidance allows works to the walls and roof and so, in the spirit of the legislation, it did not consider the elements providing structural support to the buildings amounted to a breach. It also reiterated that internal works did not constitute development. Lastly the Council explained that, even if the works were considered to be a breach, it did not consider they caused any harm and therefore it would not be expedient to take enforcement action.

2.1.16

Mr X and his representatives continued to disagree with the Council's decision.

2.1.17

During this period Mr X had also submitted a Freedom of Information (FOI) request regarding the Council's previous employment of the applicants' agent. The Council confirmed, after some correspondence, that the agent was a contracted consultant hired by the Council for just over a year.

2.1.18

In June 2017 Mr X made further reports about works at the site constituting a departure from the regulations.

2.1.20

The Council visited the site and decided that further investigation was warranted. It issued the applicants with a Temporary Stop Notice (TSN) thereby halting works to the smaller barn while it investigated. Mr X was

2.1.21

notified of this action.

In August the Council told Mr X it was satisfied that enough of the original structure of the larger barn remained. Therefore no planning breach had occurred and works could continue. However, it said it did not consider enough of the original structure of the smaller barn remained and so it considered this to be a new building for which planning permission would be required. The Council advised Mr X it would consider what enforcement action to take and

2.1.22

notify him in due course.

In September the Council notified Mr X that the applicants had applied for planning permission for the construction/retention of the small barn as a

3. domestic outbuilding associated with the residential occupation of the large barn.

3.1

Ombudsman's Decision

3.2 The LGO accepted that the Council's fault was not in dispute. The Council had already admitted that it should have consulted with Mr X's family on two occasions and it did not do so. In responding to Mr X's complaint under the Council's own complaints procedure and in consultation with the LGO, the Council recognised the fault in the failure to consult, apologised and offered Mr X £400 in compensation for the uncertainty and outrage caused to his family. Mr X declined this offer and complained to the LGO.

3.3 The LGO also found evidence of fault by the Council for not keeping Mr X informed about developments on some occasions. This has caused Mr X and his family consternation as to what, if anything, was being done and necessitated avoidable contact by him and his representatives. The LGO recommended the Council writes to Mr X apologising to him. The Council agreed.

The LGO concluded as follows:

4. *I have found evidence of fault by the Council in its failure to notify Mr X and his family about two planning applications and for failing to keep him updated on the actions it was taking regarding his concerns. The Ombudsman did not find any fault with the Council's consideration of Mr X's reports of breaches of planning control. It is not for us to decide the law and so I have come to no view on the Council's interpretation of the regulations. For these reasons I have ended my consideration of this complaint.*

4.1

Agreed Remedy

4.2

For these reasons, the LGO considers Mr X and his family have been caused an injustice.

To address the above injustice the LGO recommends the Council:

5. • Writes to Mr X and the Ombudsman explaining why he was not notified and what action it is taking to prevent any reoccurrence of this failing; and

5.1 • Pays Mr X £400 in recognition of the uncertainty and outrage caused to him and his family.

Outcome/Update

A letter of apology has been written to Mr X, with an explanation regarding the lack of notification for the two applications. Measures have also been put in place to ensure this kind of error does not occur again. At the time of writing this report Mr X had not taken up the offer of the compensation payment.