



## Standards Committee

<b>Date:</b>	<b>Tuesday, 29 September 2009</b>
<b>Time:</b>	<b>6.00 pm</b>
<b>Venue:</b>	<b>Committee Room 1 - Wallasey Town Hall</b>

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## AGENDA

### 1. DECLARATIONS OF INTEREST

Members are asked to consider whether they have personal or prejudicial interests in connection with any item(s) on this agenda and, if so, to declare them and state what they are.

### 2. MINUTES (Pages 1 - 10)

To receive the minutes of the meetings held on 30 June, 16 July (Standards Hearing Panel) and 7 August (Consideration meeting).

### 3. LOCAL GOVERNMENT OMBUDSMAN ANNUAL LETTER AND CURRENT PERFORMANCE (Pages 11 - 26)

### 4. COMPLAINT TO LOCAL GOVERNMENT OMBUDSMAN - RESIDENTIAL DEVELOPMENT OFF STATHAM ROAD, NOCTORUM (Pages 27 - 40)

To receive a report outlining the findings of the Local Government Ombudsman (LGO) following a complaint by the owner of 50 Newdales Close, Beechwood with regard to application reference APP/2006/5560 and the grant of planning permission for the erection of 33 No.dwellings on land adjacent to 84 Statham Road, Noctorum. The Committee is recommended to note the report and the observations of the Local Government Ombudsman

### 5. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR



## STANDARDS COMMITTEE

Tuesday, 30 June 2009

<u>Present:</u>	Brian Cummings (Chair)	
	Councillors	AR McLachlan                      WJ Davies C Teggin                                C Meaden L Fraser                                 A Bridson K Hayes                                 A Taylor
<u>Deputies</u>	Councillors	L Rowlands (In place of C Blakeley)
<u>Independent Members</u>	Ken Harrison (Vice-Chair)	Alex Nuttall
<u>Apologies</u>	Councillors	C Blakeley

### 1 **DECLARATIONS OF INTEREST**

Members of the Committee were invited to consider whether they had a personal or prejudicial interest in connection with any of the items on the agenda and, if so, to declare it and state the nature of such interest. No declarations were made.

### 2 **MINUTES**

Resolved - That the minutes of the previous meeting, held on 30 March 2009, be accepted as a correct record.

The following actions were noted:

- (i) Register of Gifts and Hospitality (minute 39) – records regarding gifts and hospitality should be forwarded to senior committee officers until this facility is on line.
- (ii) Annually Assembly of Standards Committees – the Director of Law, HR and Asset Management, will progress this matter.
- (iii) Ombudsman Complaint – the issue of transition from child care to adult care will be reviewed by the appropriate overview and scrutiny committees and the results of their scrutiny will be reported to this committee.

### 3 **ETHICAL GOVERNANCE 2008/09**

Further to minute 36 (30/3/09, Liz Temple-Murray, the Audit Manager, presented the final report following the Audit Commission's Review of Ethical Governance within the Authority. She referred to the discussion at the previous meeting regarding interviewees' comments and reported that the EG survey comments were published

in full and could be viewed on the Council's Internet site (Web Library) [Library document - Wirral Ethical Governance Survey - Comments](#)

The Director of Law, HR and Asset Management, reported that the Action Plan included specific dates to address the recommendations contained in the EG report and he would report back on progress made.

The Chair commented that the EG Report was positive indicating that the Council had a good understanding of the key ethical governance issues and the action needed to promote and maintain standards. He highlighted some of the key recommendations in the Action Plan:-

- to raise the profile of the Standards Committee and communicate its work to a wider public;
- improve public confidence through effective ethical governance arrangements;
- review the level of training for members and officers on the ethical agenda

Resolved –

(1) That the report and action plan be noted.

(2) That regular progress reports on the action plan be presented to future meetings of this committee.

#### **4 GOVERNANCE OF PARTNERSHIPS**

Further to minute 38 (30/3/09) Liz Temple-Murray, the Audit Manager, presented a report following the Audit Commission's Review of Partnership Governance. The purpose of the review was to consider whether the recommendations from previous work had been implemented and whether key lines of enquiry within the Use of Resources Assessment and Value for Money were likely to be satisfied. The main conclusions of the report were that the Council generally worked well with partners and there were some examples of positive outcomes.

The recommendations in the report formed the basis of an Action Plan and identified some specific actions for improvement. It highlighted the need to strengthen corporate arrangements for governing partnerships and noted that the Council was making good progress in addressing some of these issues through the roll out of its Partnership Toolkit which would provide a structure for partnership governance.

The Director of Law, HR and Asset Management, responded to questions from members regarding:

- use of the toolkit and training and support for officers, members, and partners, to clarify roles and responsibilities;
- the role of chief officers and line managers;
- the structure for partnership governance provided through the use of the toolkit;
- arrangements for the member training programme.

Resolved –

- (1) That the report and action plan be noted.
- (2) That regular progress reports on the action plan be presented to future meetings of this committee.

## 5 **OMBUDSMAN REPORT-REPORT NO 07/C/03447**

Further to minute 6 (30/6/08) when the Acting Monitoring Officer was authorised to respond to the Ombudsman concerning a finding of maladministration and injustice against the Council regarding Mr H and his child S, the Interim Head of Legal and Member Services submitted a report outlining action which had been taken since that meeting.

The Interim Head of Legal and Member Services had reviewed the matter in April 2009 and a copy to the Ombudsman of her letter dated 17 April 2009 was attached to the report (Appendix 1). The Ombudsman had advised that when the Standards Committee had received the latest correspondence between the Council and the Ombudsman and was informed in connection with the progress made by child S, the Ombudsman was likely to consider that all outstanding issues had been resolved. It was intended that a separate report would be presented to a future meeting concerning the role of the Standards Committee in connection with specific complaints to the Ombudsman.

In response to questions from members regarding implementation of the Ombudsman's recommendations, the Director reported that Howard Cooper, Director of Children's Services, had taken personal responsibility for this matter and the lessons learnt from this case had been cascaded through his department.

It was noted that this committee's terms of reference included consideration reports arising from ombudsman investigations. The committee discussed its approach to this matter and indicated its wish to be informed of the higher level cases which result in findings of maladministration and reduction in service standards.

Resolved - That the Committee note that the Council has implemented the recommendations made in the Ombudsman's Report issued on 10 April 2008, having accepted the findings of the Ombudsman, and also note the progress being made by child S at the school.

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## STANDARDS HEARING PANEL

Thursday, 16 July 2009

Present: Councillor Cummings (Chair)  
Councillors WJ Davies C Teggin  
L Fraser

### 1 DECLARATIONS OF INTEREST

Members of the panel were invited to consider whether they had a personal or prejudicial interest in connection with any of the items on this agenda and, if so, to declare it and state the nature of such interest. No declarations were made.

### 2 EXEMPT INFORMATION

The Hearings Panel was asked to consider whether the hearing should be conducted in private. Having applied the public interest test, the panel decided that the release of the documentation outweighed any argument that it be withheld.

### 3 COMPLAINT AGAINST A MEMBER OF THE COUNCIL - CASE REFERENCE 2008/01

#### 1. Summary of the Complaint

1.1 The complaint relates to Councillor Smith's conduct at the Annual Meeting of the Council [which met over a number of evenings, but the date in question was] on 20 May 2008. The complaint states that Councillor Smith, during the course of the debate, directed comments to some of the younger members of the Conservative Group sat opposite him in the Council chamber

#### 1.2 Relevant sections of the Code of Conduct:

The complaint is that Councillor Smith has acted in a manner which amounts to a breach of the Code of Conduct for members of Wirral Council. The current code was adopted by Council on 21 May 2007. The relevant parts of the Code are contained within the general obligations in paragraph 3 of the Code:

(i) You must treat others with respect.

(ii) You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

1.3 Investigations were carried out by Mr Simon Goacher, Acting Monitoring Officer and Head of Legal Services.

1.4 Mr Goacher's report on the allegations was completed on 20 March,2009

1.5 The investigator's report found that there had been a failure to comply with the Code of Conduct. Councillor Smith's case was therefore referred to the Hearings Panel for determination.

## **2. Procedure**

2.1 Following receipt of the investigating officer's report, Councillor Smith accepted that he made an inappropriate and offensive comment.

2.2 He indicated that he would attend the hearing and present his case.

## **3. Findings of fact**

3.1 The findings of fact in the Investigating Officer's report were accepted by the subject member at the hearing .

## **4. Written Submissions for Hearing**

4.1 Councillor Smith read out a prepared statement indicating:

(i) that he had never denied making an inappropriate and offensive comment at the Council meeting on 20 May 2008.

(ii) that he had apologised to the Council verbally and had indicated to the monitoring officer in November 2008 that he was prepared to give a written apology.

(iii) that he wished to offer an unreserved apology to the Hearing Panel.

(iv) that some 14 months had elapsed since the incident and he therefore questioned whether it was in the interests of natural justice for the case to be heard after such a long time.

## **5. Hearings Panel's decision on whether or not there had been a failure to comply with the Code of Conduct**

5.1 The Panel considered the Investigating Officer's report together with the offer on the part of Councillor Harry Smith to submit a written apology to the Council.

5.2 The Panel reached the following decision after considering the Investigating Officer's report and the information referred to in paragraph 4.1 above:

Councillor Harry Smith did breach paragraphs 3(1) and 3(5) of the Code of Conduct by failing to treat others with respect;

5.3 The reasons for this decision are that foul and abusive language such as that used by Councillor Smith at the Council meeting on 20 May 2008 is totally unacceptable. The role of the Panel is to uphold the standards agreed by each member in compliance with the Code of conduct.



On this occasion the Code has been seriously breached and Councillor Smith has accepted that he indeed did breach the Code and has since made an apology. The Panel believe, however, that this apology to the Council was qualified and not sufficient. It therefore instructs Councillor Smith to send a written apology to the Council and that he should serve a period of suspension.

## **6. Hearings Sub-Committee's decision on what penalty if any ought to be imposed?**

6.1 The Panel was concerned that a 14 months had elapsed before formal action, to lodge a complaint about Councillor Smith's conduct was carried out. The Panel expressed the view that officer concerns about member conduct should be taken up at a much earlier stage.

6.2 The Panel decided that Councillor Smith:

(i) should send out a letter of apology in the terms to be agreed by the Director of Law, HR and Asset Management, to all members of the Council and the independent members of the Standards Board on Friday 24 July 2009.

(ii) be suspended from the office of councillor for a period of 5 working days from 10 to 14 August 2009

## **7. Right to appeal**

7.1 Councillor Harry Smith has the right to apply in writing to the President of the Adjudication Panel for England for permission to appeal against the Hearings Panel's findings. Written notice requesting permission to appeal must be received by the President of the Adjudication Panel for England within 21 days of the members receipt of the notification of the Hearings Sub-Committee's findings.

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## STANDARDS COMMITTEE

Friday, 7 August 2009

Present:

Alex Nuttall (Chair)

Councillors

C Blakeley

C Meaden

K Hayes

A Bridson

### 6 APPOINTMENT OF CHAIR

Resolved – That Mr Alex Nuttall be appointed Chair of this meeting.

### 7 DECLARATIONS OF INTEREST

Members were asked to consider whether they had personal or prejudicial interests in connection with any item(s) on this agenda and, if so, to declare them and state what they were. No such declarations were made.

### 8 EXEMPT INFORMATION - EXCLUSION OF MEMBERS OF THE PUBLIC

The Committee was asked to consider whether the meeting should be conducted in private. Having applied the public interest test, the Committee decided that the release of the documentation outweighed any argument that it be withheld.

### 9 COMPLAINT 2008/2

The Committee considered the final report of the independent Investigating Officer appointed to consider the alleged conduct of Councillor James Keeley during and after a meeting of the Liscard and Egremont Partnership held on 29 July 2008, in that he failed to treat others with respect and brought his office or authority into disrepute.

Having been advised that the Committee was required to decide whether, based on the evidence presented, that it agreed or otherwise with the findings of the Investigating Officer, Members proceeded to consider the evidence presented and the conclusions subsequently drawn by the Investigating Officer that Councillor Keeley did not fail to comply with the code of conduct after the partnership meeting.

Members expressed their concerns regarding the delay in bringing this matter to the Committee for determination and asked for a report to the next meeting covering resource issues, joint arrangements with other public bodies for the investigation of complaints, and guideline targets to improve the efficiency of the complaints process.

Resolved –

(1) That the findings of the Investigating Officer, that Councillor Keeley did not fail to comply with the provisions of paragraphs 3(1) and 5 of the Council's Code of conduct be accepted.

(2) That this Committee's reservations regarding the delay in dealing with complaints be referred to the Director of Law, HR and Asset Management, together with the request for a further report to the next meeting on ways of improving the current system.

## WIRRAL COUNCIL

### STANDARDS COMMITTEE

29 SEPTEMBER 2009

### REPORT OF THE DIRECTOR OF FINANCE

#### LOCAL GOVERNMENT OMBUDSMAN – ANNUAL LETTER AND CURRENT PERFORMANCE

#### 1. EXECUTIVE SUMMARY

- 1.1. The Local Government Ombudsman (LGO) produces an annual letter reviewing each Local Authority. The letter sets out the number of complaints made to the LGO about the Authority, the outcomes, how they have been dealt with and response times. The LGO's latest annual letter on Wirral was published in June 2009. A copy of the letter is attached as Appendix 1 to this report. This report sets out the contents of the letter and the current performance in this financial year on response times.

#### 2. BACKGROUND

- 2.1. Members will recall that this Committee, at its meeting on 30 September 2008 considered the last annual letter of the LGO. This highlighted an average response time of 26.8 days, which was a significant improvement on the 2006-07 average of 112 days. The target response time is 28 days for most complaints, but 14 days for complaints relating to schools admission appeals.
- 2.2. In the annual letter for 2008/09 the LGO notes that performance comparison with previous years could be 'misleading' due to changes in their working practices, specifically the creation of a LGO Advice Team to filter contacts before a full investigation is begun. As a consequence the report mainly focuses on the 2008-09 performance, rather than comparing directly with 2007/08.
- 2.3. As detailed in the 2008 report to this Committee, changes to the Council process for dealing with LGO contacts were made with the responsibility for liaison with the LGO passing from Legal and Member Services to Revenues, Benefits and Customer Services. The handover took place on 1 April 2009.

#### 3. RESPONSE TIMES

- 3.1. After previous performance issues the LGO notes a continued improvement in response times in her annual letter with an average of 16.2 days taken to respond to enquiries.
- 3.2. This improved performance has been the result of a clear action plan, regular monitoring of performance and sustained effort on the part of many staff across all departments. The challenge will be to maintain this improving level of performance during the current year.

#### **4. NUMBER OF COMPLAINTS**

##### **4.1.** In her letter the LGO states:

*During the year the Advice Team received 218 enquiries about your Council. 150 complaints were forwarded to the investigative team for investigation. The figure was considerably inflated by a large number of complaints about the proposal to close a number of libraries in the Council's area.*

#### **5. COMPLAINT OUTCOMES**

##### **5.1.** The LGO made the following comments about how complaints were resolved. She states:

*43 complaints were determined during the year. 6 were found to be outside the jurisdiction and in another 9 cases discretion was exercised not to pursue the complaints further. In 16 cases there was no evidence of maladministration.*

##### **5.2.** The LGO also referred to the following specific outcome:

A report of maladministration causing injustice to the claimant was issued as a result of the Council's failure to comply with a Special Educational Needs and Disability Tribunal's decision to place the complainant's child in a mainstream secondary school. The LGO states:

*Although the Council agreed to my recommendations, I was gravely concerned with other aspects of the way that it dealt with my report. These concerns have been aired with the Chief Executive and other senior officers and I hope no further reference to these issues will be necessary in the next annual review.*

##### **5.3.** Of the remaining 12 complaints determined in the reporting year, 11 were settled locally (action taken by the Council which the LGO considers a satisfactory resolution). Details are provided in the LGO's letter contained in Appendix 1.

##### **5.4.** Changes implemented as a result of these local settlements include:

- Amendments to the scheme of delegation to allow compensation payments (in cases of proven maladministration) without referral to the LGO, as agreed by this Committee on 30 September 2008.
- Guidance drafted to assist with planning applications, with changes to the procedures for preparing reports to the Planning Committee, ensuring that the potential impact on neighbours is considered.

#### **6. CHANGES TO THE PROCESS FOR DEALING WITH LGO COMPLAINTS**

##### **6.1.** Liaison with the LGO is now undertaken by the Revenues, Benefits and Customer Services section with further changes implemented to maintain the improving response times. Every contact with the LGO is now recorded and measured against the required timescale for resolution, reflected in the breakdown provided for current performance below. For all corporate complaints reaching a review by the LGO there should now be a complete record of the history of each stage in the process and what the Council did to offer resolution for the complainant. Such data will be invaluable in not only assessing how well the Council deals with complaints but also providing evidence to shape future service provision and support best practice in dealing with customers.

## 7. CURRENT PERFORMANCE

- 7.1. For the period 1 April – 31 July 2009 the Council received the following contacts, recorded through the Customer Relationship Management (CRM) system:

Dept/Service Area	Type of Contact			% Target Achieved	Average Days to Respond
	Request for Information	Follow-up Enquiry	Full Investigation		
Children & Young People-Schools	11	3		92.8	12.2
Children & Young People -Youth Service	2			50.0	22.0
Adult Social Services - Care Services	10	1	1	33.3	37.7
Finance-Benefits	1	1		50.0	17.5
Finance-Revenues	2	1		100.0	8.0
Regeneration - Licensing	1			0.0	44.0
Regeneration - Sport and Recreation	1			100.0	1.0
Technical Services- Planning	6		1	85.7	8.3
Technical Services - Residents Parking	1			100.0	8.0

- 7.2. LGO contacts are split between preliminary requests for information, full investigations and follow-up enquiries (to a preliminary request or full investigation). Standard response times are 28 calendar days (14 calendar days for schools appeals), unless the LGO sets a specific target date for response. On average contacts were responded to within 15.3 calendar days, which maintains the improvements made over the previous reporting period.
- 7.3. The LGO can, if relevant, report a final decision made in the case of individual contacts. Of the 16 contacts where a decision has been communicated, seven were found to have no evidence of maladministration, seven were resolved with the Ombudsman's discretion (usually due to no/insufficient evidence of injustice found) and two were classed as premature applications which needed to be investigated through the Council's complaint procedure first.
- 7.4. The Council received 43 contacts from the LGO in this period with only two of these resulting in new investigations. Both of these investigations have been responded to within the timescale, with no evidence of maladministration found in the Department of Adult Social Services - Care Services case and a decision pending in the Technical Services - Planning case. Of the total contacts responded to, 71.4% were resolved within the required timescale.
- 7.5. Of the twelve contacts which were resolved outside the target date, Adult Social Services – Care Services accounted for seven of these with an average response of 44.6 days per contact. This is in part due to changes in the LGO's working practices (as detailed in paragraph 2.2) and the introduction of the 2009 Adult Social Services complaint regulations. As a consequence the LGO is requesting more detailed information before deciding how to proceed with an investigation, if at all. This increased workload has to be balanced with operational demands, with the service committed to liaising fully with the LGO to ensure contacts are dealt with in an efficient and proportionate manner.

**8. CORPORATE OBJECTIVES**

- 8.1. The manner in which the Council responds to the LGO contributes towards the objective to be an excellent council. The continuing improvement in response times is a step towards that objective. The ability to effectively review LGO contacts and make informed decisions based on this data also supports this objective.

**9. FINANCIAL AND STAFFING IMPLICATIONS**

- 9.1. There are none arising directly from this report.

**10. LOCAL MEMBER SUPPORT IMPLICATIONS**

- 10.1. There are no implications for individual wards arising directly from this report.

**11. EQUAL OPPORTUNITY IMPLICATIONS**

- 11.1. There are none arising directly from this report.

**12. HUMAN RIGHT IMPLICATIONS**

- 12.1. There are none arising directly from this report.

**13. LOCAL AGENDA 21 IMPLICATIONS**

- 13.1. There are none arising directly from this report.

**14. COMMUNITY SAFETY IMPLICATIONS**

- 14.1. There are none arising directly from this report.

**15. PLANNING IMPLICATIONS**

- 15.1. There are none arising directly from this report.

**16. BACKGROUND PAPERS**

- 16.1. Local Government Ombudsman Annual Letter – June 2009.

**17. RECOMMENDATION**

- 17.1. That the Committee notes the contents of this report.

IAN COLEMAN  
DIRECTOR OF FINANCE



**The Local Government Ombudsman's  
Annual Review  
Wirral Metropolitan Borough  
Council  
for the year ended  
31 March 2009**

The Local Government Ombudsman (LGO) provides a free, independent and impartial service. We consider complaints about the administrative actions of councils and some other authorities. We cannot question what a council has done simply because someone does not agree with it. If we find something has gone wrong, such as poor service, service failure, delay or bad advice, and that a person has suffered as a result, the Ombudsmen aim to get it put right by recommending a suitable remedy. The LGO also uses the findings from investigation work to help authorities provide better public services through initiatives such as special reports, training and annual reviews.

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# Section 1: Complaints about Wirral Metropolitan Borough Council 2008/09

## Introduction

This annual review provides a summary of the complaints we have dealt with about Wirral Metropolitan Borough Council.

I hope that the review will be a useful addition to other information your authority holds on how people experience or perceive your services.

Two appendices form an integral part of this review: statistical data for 2008/09 and a note to help the interpretation of the statistics.

## Changes to our way of working and statistics

A change in the way we operate means that the statistics about complaints received in 2008/09 are not directly comparable with those from 2007/08. Since 1 April 2008 the new LGO Advice Team has been the single point of contact for all enquiries and new complaints. The number of telephone calls to our service has increased significantly since then to more than 3,000 a month. Our advisers now provide comprehensive information and advice to people who telephone, write or e-mail. It enables citizens to make informed decisions about whether to put their complaint to us.

This means that direct comparisons with some previous year-statistics are difficult and could be misleading. So this annual review focuses mainly on the 2008/09 statistics without drawing those comparisons.

## Enquiries and complaints received

During the year the Advice Team received a total of 218 enquiries about your Council. 150 complaints were forwarded to the investigative team for investigation. This figure was considerably inflated by a large number of complaints about the proposal to close a number of libraries in the Council's area.

## Complaint outcomes

43 complaints were determined during the year. Six were found to be outside jurisdiction and in another 9 cases discretion was exercised not to pursue the complaints further. In 16 cases there was no evidence of maladministration.

## Reports

I issued one report about maladministration causing injustice to the complainant. This was about a complaint that the Council had not complied with the decision of a Special Educational Needs and Disability Tribunal that the complainant's child should attend a mainstream secondary school in the Council's area. This arose because of a dispute between the Council and the complainant about whether the family's main residence was in the Council's area or elsewhere. As a result the child was deprived of full-time education from October 2005 to November 2006.

The Council agreed to remedy the injustice by reserving until the end of year 11 a sum equivalent to the cost of the year's education that the child had missed, when the money would be used to fund any additional educational provision that the school and an educational psychologist

recommended as being beneficial. The Council also agreed to pay the complainant £1000 in recognition of the anxiety, stress, time and trouble that had been caused by the maladministration, together with a payment of £655 to reimburse the cost of private tuition.

Although the Council agreed to my recommendations, I was gravely concerned about other aspects of the way that it dealt with my report. Those concerns have been aired with the Chief Executive and other senior officers and I hope that no further reference to the issues will be necessary in the next Annual Review.

### **Local settlements**

We will often discontinue enquires into a complaint when a council takes or agrees to take action that we consider to be a satisfactory response – we call these local settlements. In 2008/09, 27.4% of all complaints the Ombudsmen decided and which were within our jurisdiction were local settlements. Of the complaints we decided against your authority, 11 were locally settled and I will mention these below.

### ***Adult care services***

Two complaints resulted in settlements in this category. The first was a complaint about a failure to make proper arrangements for the transfer of the complainant's disabled child from school to adult care; failure to make direct payments properly; and failure to fund respite care properly. This was remedied by a payment of £5000 compensation. This complaint had been referred to me by the Council itself because its constitution does not allow for compensation to be paid without my approval.

The other matter concerned the support given to the complainant's elderly relative who had gone into a private residential home. In addition to compensation already paid to the complainant before the complaint was made to me, the Council offered to contact the relative to see if they wished to have assistance from the Council's welfare rights staff.

### ***Children and family services***

One complaint was settled under this heading. This was about a long delay in organising the Council's internal complaints procedure which was settled by an apology and £500 compensation for the complainant's time and trouble. The Council initially failed to recognise how poor its handling of this complaint had been and this caused some delay in resolving the complaint.

### ***Land***

In this case the Council made a mistake about which path it intended to close. Once the Council recognised its mistake it remedied the matter by withdrawing the closure plan.

### ***Planning applications***

Two complaints were settled under this heading. The first complaint was about the failure by the Council to respond to an application for the erection of a telephone mast within the required time scale, as a result of which the Council was unable to prevent the telecommunications company going ahead. The Council agreed to ask the District Valuer to estimate that the difference in the value of the complainant's home with and without the mast. In addition the Council agreed to pay the complainant £250 for their time and trouble in pursuing the complaint.

The other complaint was about a number of failings in the way that a planning application was considered. The Council agreed to ask the District Valuer to calculate the loss of value to the

complainant's property as a result of the granting of the permission. The Council took action to draft guidance on separation distances and the height of land, as well as amending procedures to ensure that reports to the planning committee stressed the potential impact on neighbours. Training for planning committee members was also to be examined. In addition the Council agreed to pay £250 compensation to the complainant for their time and trouble in complaining.

### ***School admissions***

Three complaints about school admissions matters were settled. The first concerned some confusion over the complainant's right of appeal against the refusal of a place at their preferred school.

The other two complaints concerned the appeal process for a selective school in the Council's area, where the Appeal Panel was given incomplete information as a result of which it did not properly consider the fairness of the selection process.

All three complaints were settled by the offer of fresh appeal hearings.

### ***Miscellaneous***

The Council settled a complaint about a failure over a prolonged period to provide information requested by the complainant in connection with an earlier complaint. The Council provided the information and offered £50 compensation.

### **Liaison with the Local Government Ombudsman**

My office made enquiries of the Council on 103 occasions (again this figure is greatly inflated by the number of complaints about library provision). The average number of days taken to respond was 16.2, as against 26.3 days in 2007/08 and 111.9 days in 2006/07.

### **Training in complaint handling**

Part of our role is to provide advice and guidance about good administrative practice. We offer training courses for all levels of local authority staff in complaints handling and investigation. All courses are presented by experienced investigators. They give participants the opportunity to practise the skills needed to deal with complaints positively and efficiently. We can also provide customised courses to help authorities to deal with particular issues and occasional open courses for individuals from different authorities.

I have enclosed some information on the full range of courses available together with contact details for enquiries and bookings.

## **Conclusions**

I welcome this opportunity to give you my reflections about the complaints my office has dealt with over the past year. I hope that you find the information and assessment provided useful when seeking improvements to your Council's services.

**Mrs A Seex  
Local Government Ombudsman  
Beverley House  
17 Shipton Road  
YORK  
YO30 5FZ**

**June 2009**

## Section 2: LGO developments

### Introduction

This annual review also provides an opportunity to bring councils up to date on developments – current and proposed – in the LGO and to seek feedback. It includes our proposal to introduce a ‘statement of reasons’ for Ombudsmen decisions.

### Council First

From 1 April 2009, the LGO has considered complaints only where the council’s own complaints procedure has been completed. Local authorities have been informed of these new arrangements, including some notable exceptions. We will carefully monitor the impact of this change during the course of the year.

### Statement of reasons: consultation

The Local Government and Public Involvement in Health Act 2007 made provision for the LGO to publish statements of reasons relating to the individual decisions of an Ombudsman following the investigation of a complaint. The Ombudsmen are now consulting local government on their proposal to use statements of reasons. The proposal is that these will comprise a short summary (about one page of A4) of the complaint, the investigation, the findings and the recommended remedy. The statement, naming the council but not the complainant, would usually be published on our website.

We plan to consult local authorities on the detail of these statements with a view to implementing them from October 2009.

### Making Experiences Count (MEC)

The new formal, one stage complaint handling arrangement for adult social care was also introduced from 1 April 2009. The LGO is looking to ensure that this formal stage is observed by complainants before the Ombudsmen will consider any such complaint, although some may be treated as exceptions under the Council First approach. The LGO also recognises that during the transition from the existing scheme to the new scheme there is going to be a mixed approach to considering complaints as some may have originated before 1 April 2009. The LGO will endeavour to provide support, as necessary, through dedicated events for complaints-handling staff in adult social care departments.

### Training in complaint handling

Effective Complaint Handling in Adult Social Care is the latest addition to our range of training courses for local authority staff. This adds to the generic Good Complaint Handling (identifying and processing complaints) and Effective Complaint Handling (investigation and resolution), and courses for social care staff at both of these levels. Demand for our training in complaint handling remains high. A total of 129 courses were delivered in 2008/09. Feedback from participants shows that they find it stimulating, challenging and beneficial in their work in dealing with complaints.

### **Adult Social Care Self-funding**

The Health Bill 2009 proposes for the LGO to extend its jurisdiction to cover an independent complaints-handling role in respect of self-funded adult social care. The new service will commence in 2010.

### **Internal schools management**

The Apprenticeship, Skills, Children and Learning Bill (ASCL) 2009 proposes making the LGO the host for a new independent complaints-handling function for schools. In essence, we would consider the complaint after the governing body of the school had considered it. Subject to legislation, the new service would be introduced, in pilot form, probably in September 2010.

### **Further developments**

I hope this information gives you an insight into the major changes happening within the LGO, many of which will have a direct impact on your local authority. We will keep you up to date through LGO Link as each development progresses but if there is anything you wish to discuss in the meantime please let me know.

**Mrs A Seex  
Local Government Ombudsman  
Beverley House  
17 Shipton Road  
YORK  
YO30 5FZ**

**June 2009**



# Appendix 1: Notes to assist interpretation of the statistics 2008/09

## Introduction

This year, the annual review only shows 2008/09 figures for enquiries and complaints received, and for decisions taken. This is because the change in the way we operate (explained in the introduction to the review) means that these statistics are not directly comparable with statistics from previous years.

### Table 1. LGO Advice Team: Enquiries and complaints received

This information shows the number of enquiries and complaints received by the LGO, broken down by service area and in total. It also shows how these were dealt with, as follows.

**Formal/informal prematures:** The LGO does not normally consider a complaint unless a council has first had an opportunity to deal with that complaint itself. So if someone complains to the LGO without having taken the matter up with a council, the LGO will usually refer it back to the council as a 'premature complaint' to see if the council can itself resolve the matter. These are 'formal premature complaints'. We now also include 'informal' premature complaints here, where advice is given to the complainant making an enquiry that their complaint is premature. The total of premature complaints shown in this line *does not include* the number of resubmitted premature complaints (see below).

**Advice given:** These are enquiries where the LGO Advice Team has given advice on why the Ombudsman would not be able to consider the complaint, other than the complaint being premature. For example, the complaint may clearly be outside the Ombudsman's jurisdiction. It also includes cases where the complainant has not given enough information for clear advice to be given, but they have, in any case, decided not to pursue the complaint.

**Forwarded to the investigative team (resubmitted prematures):** These are cases where there was either a formal premature decision, or the complainant was given informal advice that their case was premature, and the complainant has resubmitted their complaint to the Ombudsman after it has been put to the council. *These figures need to be added to the numbers for formal/informal premature complaints (see above) to get the full total number of premature complaints. They also needed to be added to the 'forwarded to the investigative team (new)' to get the total number of forwarded complaints.*

**Forwarded to the investigative team (new):** These are the complaints that have been forwarded from the LGO Advice Team to the Investigative Team for further consideration. The figures may include some complaints that the Investigative Team has received but where we have not yet contacted the council.

## Table 2. Investigative Team: Decisions

This information records the number of decisions made by the LGO Investigative Team, broken down by outcome, within the period given. **This number will not be the same as the number of complaints forwarded from the LGO Advice Team** because some complaints decided in 2008/09 will already have been in hand at the beginning of the year, and some forwarded to the Investigative Team during 2008/09 will still be in hand at the end of the year. Below we set out a key explaining the outcome categories.

**MI reps:** where the LGO has concluded an investigation and issued a formal report finding maladministration causing injustice.

**LS (local settlements):** decisions by letter discontinuing our investigation because action has been agreed by the authority and accepted by the Ombudsman as a satisfactory outcome for the complainant.

**M reps:** where the LGO has concluded an investigation and issued a formal report finding maladministration but causing no injustice to the complainant.

**NM reps:** where the LGO has concluded an investigation and issued a formal report finding no maladministration by the council.

**No mal:** decisions by letter discontinuing an investigation because we have found no, or insufficient, evidence of maladministration.

**Omb disc:** decisions by letter discontinuing an investigation in which we have exercised the Ombudsman's general discretion not to pursue the complaint. This can be for a variety of reasons, but the most common is that we have found no or insufficient injustice to warrant pursuing the matter further.

**Outside jurisdiction:** these are cases which were outside the Ombudsman's jurisdiction.

## Table 3. Response times

These figures record the average time the council takes to respond to our first enquiries on a complaint. We measure this in calendar days from the date we send our letter/fax/email to the date that we receive a substantive response from the council. The council's figures may differ somewhat, since they are likely to be recorded from the date the council receives our letter until the despatch of its response.

## Table 4. Average local authority response times 2008/09

This table gives comparative figures for average response times by authorities in England, by type of authority, within three time bands.

**LGO Advice Team**

Enquiries and complaints received	Adult care services	Children and family services	Education	Housing	Benefits	Public Finance inc. Local Taxation	Planning and building control	Transport and highways	Other	Total
Formal/informal premature complaints	2	4	0	3	0	3	7	4	10	33
Advice given	4	2	2	2	0	1	2	1	21	35
Forwarded to investigative team (resubmitted premature)	2	0	1	0	1	0	2	1	4	11
Forwarded to investigative team (new)	8	2	7	0	0	2	2	1	117	139
<b>Total</b>	<b>16</b>	<b>8</b>	<b>10</b>	<b>5</b>	<b>1</b>	<b>6</b>	<b>13</b>	<b>7</b>	<b>152</b>	<b>218</b>

**Investigative Team**

Decisions	MI reps	LS	M reps	NM reps	No mal	Omb disc	Outside jurisdiction	Total
	01/04/2008 / 31/03/2009	1	11	0	0	16	9	6

**Response times**

	FIRST ENQUIRIES	
	No. of First Enquiries	Avg no. of days to respond
1/04/2008 / 31/03/2009	103	16.2
2007 / 2008	33	26.3
2006 / 2007	52	111.9

**Average local authority response times 01/04/2008 to 31/03/2009**

Types of authority	<= 28 days %	29 - 35 days %	> = 36 days %
District councils	60	20	20
Unitary authorities	56	35	9
Metropolitan authorities	67	19	14
County councils	62	32	6
London boroughs	58	27	15
National park authorities	100	0	0

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## WIRRAL COUNCIL

PLANNING COMMITTEE – 11 June 2009

### REPORT OF THE DIRECTOR OF TECHNICAL SERVICES

#### COMPLAINT TO THE LOCAL GOVERNMENT OMBUDSMAN RE RESIDENTIAL DEVELOPMENT OFF STATHAM ROAD, NOCTORUM, WIRRAL

##### 1. Executive Summary

- 1.1 This report outlines the findings of the Local Government Ombudsman (LGO) following a complaint by the owner of 50 Newdales Close, Beechwood with regard to APP/2006/5560 and the grant of planning permission for the erection of 33 No. dwellings on land adjacent to 84 Statham Road in Noctorum.
- 1.2 As a result of his investigation, the LGO was satisfied that there has been maladministration causing the complainant an injustice and asked the Local Authority to make a local settlement with the complainant to compensate for that injustice.
- 1.3 In his final response to the complainant, the LGO raised a number of concerns over the way the planning application was determined. In addition, the LGO had some concerns arising from the subsequent interviews held with Members from the Planning Committee. These LGO concerns, which will be of interest to Members and Officers alike, are detailed in this report.
- 1.4 Members are asked to note the report and the observations of the LGO and recommend to Council that Members of the Planning Committee attend a one day Refresher/training Workshop in the basics of Planning & Development Control.

##### 2. Background

- 2.1 There is a detailed planning history relating to the site in question, dating back to 2004. The site lies within the Eleanor Road Development Brief area and was therefore subject to density constraints and restrictions relating to access. An outline planning application was submitted in 2004 for the erection of 35 dwellings but was subsequently withdrawn by the applicant. A revised outline planning application was submitted in November 2004 and following a site visit by Members in January 2005, that application was subsequently approved. This consent provided for 33 dwellings with access off Statham Road. A further outline application was submitted for determination in October 2005 for 31 dwellings but was withdrawn by the applicant, on the advice of officers due to problems with access arrangements.
- 2.2 In March 2006, a full planning application was submitted by JS Bloor (Wilmslow) Homes for the erection of 33 dwellings and associated works, and this is the application which was the subject of the complaint. The application number was APP/2006/5560. The application was made valid on 23 March, 2006 and the requisite notifications and site notice posted, with the last date for comment being 4 May, 2006. There were 7 objections received (although at the time the application was being considered and heard by Planning Committee, the complainant himself did not object to the proposals).
- 2.3 Planning Committee considered the application at their meeting on 1 June, 2006. A copy of the committee report is appended for Members information. A site visit was not held on this occasion as Members considered they could sufficiently recall the site from their visit in January 2005. Members also considered the extant outline consent for 33 dwellings to be a material consideration when determining this planning application. The application was therefore approved by the Planning Committee.

### **3. The Complaint to the LGO**

- 3.1 Following commencement of development, the Council received a complaint from the owner of 50 Newdales Close, Beechwood in November, 2006 whose property backs onto the development site. He was very concerned about how close the development was being built to his property. The complaint was logged with Planning Enforcement to investigate (Ref No: 0943/06) & allocated to an investigating officer. A site visit was carried out on 28 November, 2006 and again on 8 December, 2006.
- 3.2 On 28 March, 2007 officers wrote to the complainant to advise him that the development had been checked on site by a number of officers who had confirmed that the development had in fact been built in accordance with the approved plans and the finished floor levels as submitted. The complainant had expressed concern that the development was likely to effect the value of his property but officers also advised the complainant that the devaluation of property prices was not material when considering planning applications and therefore, could not have been properly considered when the LPA were determining the planning application. It is at this point that the complainant decided to pursue his complaint with the Local Government Ombudsman.

### **4. Local Government Ombudsman Investigation**

- 4.1 In June, 2007 the Council sent a substantive response via Legal Services to the Local Government Ombudsman with regard to the points the complainant had made in his complaint. Copies of the relevant committee report and scaled plan of the site & development, including the complainant's property were included with this response. It was at this point that it was reported to the Ombudsman's nominated Investigator that the development was 36 metres from the complainant's property. This was incorrect. The actual distance was a little over 18 metres. Whilst separation distances were not recorded on the Committee Report, it led to some confusion with the Investigator at the Ombudsman's office who asked for clarification on the actual distance. Clarification of the correct distance was provided to the Ombudsman.
- 4.2 The Investigator subsequently decided that he wanted to interview the officers involved with the application and a number of Members who were at Planning Committee on 1 June, 2006 and to inspect all of the relevant files relating to this site and the complaint made. The Investigator requested to see the planning case officer, the planning enforcement officer, the Chair of Planning, the vice-chair and 3 further Members who were at the Planning Committee on 1 June, 2006. He spoke with the officers and the then Chair of Planning, John Cocker together with Councillors Elderton & Jennings on 4 April, 2008.

### **5. The Ombudsman's Decision**

- 5.1 Following the investigation, the Ombudsman raised some concerns in his response to the complaint that those Members of Planning Committee he spoke to did not appear to be "fully aware of the guidance on separation distances." He outlined the following:
- Some members of the Planning Committee were not fully aware of the guidance on separation distances. One member told me (*the Investigator*) that he was unaware that the actual distance between the complainant's home and the property to the rear would be 18 metres; he thought that what is an 'adequate distance' (policy HS4) is a matter for the planning officer to decide.
  - Another said that distance never 'came in to it' because nobody had objected about it. He also thought that the complainant's house was 3 metres further

away than the normal 14 required, although he corrected this to 15 metres. He would only consider distance as an issue if it had been raised in the report; Members are guided a lot by the case officer's report and what he says on the evening; what is an adequate distance is for the planning officer to determine;

- One member said that if the planning officer is of the view that the relationship between the proposed development and existing homes is acceptable, in the absence of any resident querying it, he assumes that the relationship has been accepted by the residents. Distance was not an issue for him because there had been no objection and nothing was raised by the officer. He accepts that he was unaware that the actual separation distance here was 18 metres; had this been raised by way of an objection, for example, he would have looked at whether it was possible to increase this to 21metres; it was also his view that what is an adequate distance is for the planning officer to decide.

5.2 Having looked at the Officer's report to Planning Committee, the Ombudsman noted that the separation distances are NOT specified but that it does state (and I quote from the report) that: "*amended plans were sought in order to secure a layout which met the Council's usual requirements with regard to separation distances and provision of amenity space. As a result, a number of house types were swapped around and slightly moved.*" Unfortunately, matters were not helped by the Council's original response to the Ombudsman in June 2007 in which she was initially informed the separation distance was 36 metres when in fact it was a little over 18metres, although the Investigator on behalf of the Ombudsman has noted that this incorrect measurement was not referred to in the planning officer's report to Planning Committee and therefore would not have influenced any Member's decision.

5.3 The Ombudsman's Investigator also expressed his concern that Members consider that it is only the role of the planning officer to consider what an adequate distance under (Policy) HS4 is. He was concerned that one (Member) was unaware of what the distance proposed was, that the issue of distance would only have been considered if raised in a report and that there was an assumption being made that the lack of objections received could be interpreted as an acceptance of the proposed relationship between the new development and existing homes.

5.4 The Ombudsman's Investigator was also concerned with one Member's view about habitable rooms and another's view about how the complainant can protect his own privacy by closing the curtains. He also commented that he had seen no evidence that the impact of the property on plot 28 on the complainant's garden was taken in to account, either by Members or by officers. In light of the height differential between the two properties, the 2m fence proposed would have a limited effect (in the Investigator's view) on reducing the impact of the development on the amenities of the complainant, especially when you consider the raised patio area and the height/distance of the first floor bedroom window.

5.5 The planning officer dealing with the application had considered that the fact that the property would not be directly facing the complainant's house would mean that it would have a minimal impact on the complainant's amenities. Having visited the site himself, the Investigator considered that too much importance was given to the angle between the two properties. He based this on his view that it was clear that the new property and the complainant's property are 'parallel or nearly so' and so an adequate distance (21 metres) ought to have been maintained especially considering the slope of the land and the difference in floor levels within the property to the existing ground level. He goes on to state that greater care ought to have been given to the issue of its impact on the complainant's property because of these factors.

5.6 In summary then, the Ombudsman's Invesitgator was not convinced that the Council (both officers and Members) had fully taken account of the potential impact this property might have on the amenities of the complainant. He also raised the fact that matters were not helped by the enforcement officer measuring the wrong property

which added to the complainant's confusion and telling him that the floor levels were wrong, only to later find an approved plan showing the levels as built. He recommended that a local settlement be agreed between the Council and the complainant as in his view, maladministration had been found and an injustice caused. The Ombudsman asked the Council to consider settling this complaint on the following basis:-

1. That a time and trouble payment be made to the complainant for pursuing this complaint.
2. That the Council should arrange for the District Valuer to prepare a report setting out the diminution in value of the property as a result of the failure to properly consider the planning application.

5.7 The District Valuers report dated 16 March 2009 concluded that there had been a fall in value in the property. Officers have accepted the content of this report and compensated the complainant accordingly. The outcome of this complaint will also be reported to the Council's Standards Committee in due course.

## **6. Lessons Learned and Improvements to be Implemented**

6.1 Standard Committee Reports have now been amended and the adopted Processes for Determining Planning Applications have been changed to provide a standard paragraph (where applicable) entitled "Separation Distances" where officers will be required to clearly outline the relevant interface distances between proposed and existing developments, and also within the site's boundaries.

6.2 Whilst Officers are required to regularly attending training events and courses as part of their Continued Professional Development requirements of the Royal Town Planning Institute, in Local Planning Authorities throughout the UK, the need for Councillor training has also been widely acknowledged. It has been recommended by the Government and various official bodies such as the Audit Commission; by political parties; by the Local Government Association; by the Royal Town Planning Institute; and in various investigations into local authorities where the planning system has been perceived to have gone wrong. Crucially, it is also recognised by Councillors themselves. More than anyone, they realise that to do their job effectively, they have to understand the basic planning principles and keep up to date on policy, procedural and legal changes. It is proposed therefore, to engage Members & DC Officers together in a one day workshop which will include a useful refresher of the overall context of planning and development control. The event will also provide an opportunity for Officers and Members to keep abreast of the latest thinking and good practice within the Planning profession.

6.3 It is proposed that Members will receive future update/information reports on issues that arise out of key Appeal decisions or future Ombudsman investigations, and where necessary, securing additional training workshops.

## **7. Equal Opportunity Implications**

7.1 There are no equal opportunity implications arising directly from this report.

## **8. Community Safety Implications**

8.1 There are no community safety implications arising directly from this report.

## **9. Local Agenda 21 Implications**

9.1 The changes introduced will allow for improvement in the provision of planning services to Wirral's residents.



**10. Local Member Support Implications**

10.1 The report will be of interest to all Members of the Council.

**11. Human Rights Implications**

11.1 There are no human rights implications arising directly from this report.

**12. Anti-Poverty Implications**

12.1 There are no known anti-poverty implications arising directly from this report.

**13. Social Inclusion Implications**

13.1 There are no known social inclusion implications arising directly from this report.

**14. Background Papers**

14.1 The following background paper was used in the preparation of this report:

Report to Planning Committee on 1 June 2006 re APP/2006/5560

**15. Recommendations**

15.1 Members are asked to note the report and the observations of the LGO, and

15.2 Recommend to Cabinet that Members of the Planning Committee undertake Refresher training in the basics of Planning & Development Control, in a one day workshop as set out at 6.2 above.

**D Green**

Director of Technical Services

This report was prepared by Matthew Davies of the Development Control Section who can be contacted on 606 2246

Planning Committee09-03-12MD

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**EAST AREA**

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ITEM	APP/2006/5560/E	WARD Bidston and St James
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**Location:** Land adjacent to 84 Statham Road Bidston Wirral CH43 7XS

**Proposal** Erection of 33 dwellings and garages and associated road works

<p><b>Applicant:</b> JS Bloor (Wilmslow) Ltd Dean Court 85 Adlington Road Wilmslow Cheshire SK9 2BT</p>	<p><b>Agent:</b> J S Bloor (Services) Ltd Ashby Road Measham Swadlingcote Derbyshire DE12 7JP</p>
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**Development Plan allocation and policies:** Primarily Residential Area, UDP; Policies HS4, GR7, TR9, NC7 and the Eleanor Road Development Brief  
Regional Spatial Strategy; Policy DP3.

**Planning History:** OUT/2004/6754/E - 35 dwellings with access from Statham Road. Withdrawn 20/10/04.  
  
OUT/2004/7662/E - Erection of 33 dwellings and garages and associated road works. Approved 28/01/2005.  
  
APP/2005/7333/E - Erection of 33 dwellings and garages and associated road works. Withdrawn 07/12/05.

**Representations and consultations**

Representations:

Residential properties surrounding the site were notified by letter.

Comments were received by:

Wirral Wildlife. Requests a bat surveyor be present when trees with cavities are taken down and bat boxes put up on remaining trees. Concern is raised with the large beech tree adjacent to 87. More native landscaping should be included in scheme and wood removed from site should be made into habitat piles.

Merseytravel request a travel plan and require developer to construct all internal highway arrangements, inc. access roads, to a standard & format that would permit ease of access for Merseylink Dial-A-Ride vehicles to buildings on site. Request good quality walking routes on site and to the nearest bus stop and developer should fund relevant bus facilities to best practice standards.

Beechwood and Ballantyne Community Housing Association object to the development as they state the developer of the site requires a deed of easement to lay surface water sewers across there land at 26 Hillfoot Close.

Wirral Society Comment: Although the boundaries of the site have been extended to include part of the garden of No 81 Eleanor Road we welcome the fact that the developer has not applied to increase the number of houses already allowed by outline permission.

We have not commented on the style of houses or materials to be used in their construction and rely on the planning officers to ensure they meet the criteria set out for Zone 3 of the Eleanor Road Planning Brief. They should meet much higher standards than those on the adjoining Cricketers' Estate.

Our present concerns are as follows:

1. Some 50% of the boundary of No 65 Eleanor Rd is adjacent to this site. The removal of trees and green cover which has already taken place has left No 65 exposed to unwelcome visitors. The two residents, Mrs. J Middlebrook who is the sole carer for her husband, Prof. Middlebrook, and they are both in their 80's. Intruders have already been onto their property on a number of occasions. We would ask the planning officers to ensure that permanent and substantial fencing be

**EAST AREA**

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constructed along the boundary between the site and No. 65 as a matter of some urgency in order to protect two extremely vulnerable people and to secure their property.

2. At the moment the level of the site which is nearest to No 65 appears to be much higher than the adjoining property. We are concerned that with trees and green cover now removed, surface water will drain onto No 65 with adverse effects for the property owners. We trust that the level will be lowered before building commences and ask the planning officers to obtain assurance from the developer that measures will be taken to prevent any ingress of surface water.

Letters & e-mails have been received from the occupiers of 2 Lymm, 53 Eleanor Road, 55 School Lane, 4 Edgebaston Way, 59, 78 & 80 Statham Road Objecting to the development on the grounds that:

1. It will cause major traffic implications and disruption to residents.
2. Traffic safety issues
3. The density of dwellings will change the character of the area.
4. Inappropriate design compared with neighbouring dwellings.
5. Questioning the removal of trees
6. Why there is no restriction on working hours
7. Devaluation of property in the area
8. Loss of natural environment and views
9. Contractor disruption.

Consultations:

Direction of Regeneration (pollution control): No objection.

Director of Technical Services (Traffic): No objection.

Crime Reduction & Architectural Liaison Comment that 1.8m is insufficient to protect 22/33 which back onto Hillfoot Close. They would like to see 2m with a steep pitched coping as a minimum.

**Directors comments:** Proposal

This is a full planning application for the erection of 33 dwellings, garages and associated works. It arises as an amended version of an approved outline application for 33 dwellings with planning permission granted for means of access and siting of the development and a subsequent withdrawn application for 31 houses.

**Site and Surroundings**

The site is allocated for primarily residential uses within the Unitary Development Plan and currently forms large gardens for houses that are accessed from Eleanor Road. A tree preservation order covers the site, which lies within zones 2 and 3 of the Eleanor Road design Brief.

The application site has increased in size from the original outline application with approval for 33 dwellings. The new proposal now includes an area of land east of 85 and 87 Eleanor Road.

The area for zone 2 is some 0.37 hectares where 7.5 detached dwellings would be erected. Zone 3 is approximately 0.93 hectares and would contain 25.5 dwellings. This would be compliant with the density requirements of the Eleanor Road design Brief and would therefore be in keeping with the character of the overall area.

The proposed layout of the development is roughly a 'T' shape with a the new expanded area grafted on to the north of the development. Access into the site gained by extending the existing carriageway at Statham Road. The site is bounded on all sides by residential properties including detached two-storey dwellings to the north of the site on Statham Road, large detached dwellings with large gardens to the east and south and two storey terrace dwellings on Hillfoot Close to the west.

### Issues & Assessment

The main issues to consider in the determination of this application are principle of development, highway safety and car parking, design and site layout, residential amenity, noise/pollution and landscaping issues.

A Bat Survey carried out on the site indicates that the vast majority of trees to be removed show no potential to support bat roost and thereby the removal of these trees is accepted in advance by the bat specialist.

The Arboricultural Implication study has been broken into two sections. This indicates 90 trees out of 209 are to be retained on the original T shaped site. The report goes on to say that within the additional area to the north there is no predominant species in the mixed woodland and a total exclusion zone is not practical on this site. A significant proportion of those to be felled have been identified as sycamore and other species such as horse chestnut, beech or cherry are in poor condition. The retention of a mixture of natural, well established trees together with replacement planting to be conditioned should ensure the proposed development will blend satisfactorily into the landscape on the lower slopes of Bidston Hill.

Comments from the tree preservation officer indicate that whilst he does not have any objections to the proposed scheme he considers the site to be of a sensitive nature and those trees to be retained should be protected and as such, it is proposed to condition any approval that no work begins on site until suitable protective fencing as outlined in British standard BS 5837:2005 Trees in relation to Construction, has been erected and checked by the Tree Preservation Officer. The Tree Officer should be notified of any changes/issues involving trees on site. Conditions should be put in place specifying no changes in gradient within the protective zones of trees and no movement of machinery through these zones. Any driveways, parking areas or hardstanding to be constructed within the canopy spread of these trees should be constructed using a no dig method, using a cellular confinement system and specialist permeable surfacing, such as Cooper Clarke Geo Block. Relevant arboricultural works should be carried out before commencement of the development.

The mix of housing types, building heights, designs and massing of the proposed development should blend in well with the existing housing stock without prejudicing the woodland character of Eleanor Road as intended by the Eleanor Road Development Brief.

The proposed scale of the development is consistent with that of the surrounding area and densities provided on site are consistent with the terms of the Eleanor Road Design Brief.

It is considered that the proposed layout of the houses on the enlarged site will offer increased spacing between plots which will relate the proposed development to its surroundings and allow maintenance of the existing natural features and vegetation. The plots allow for sufficient amenity space, relate well to the surrounding properties in terms of size and design and allow satisfactory provision of off street parking and garages.

The proposed smaller two-storey dwellings located along the eastern boundary will relate well with the existing housing stock located on the Beechwood Estate and those larger house within the scheme allow for a mix of both housing size and style.

It is considered that the development will have a minimal impact upon the amenities of the neighbouring properties in terms of material overlooking, size and overshadowing and the development would not result in any detriment to amenity of existing residents, provided that the overall design meets adopted guidelines.

Having consulted the Agent amended plans were sought in order to secure a layout which met with the Councils usual requirements with regard to separation distances and provision of amenity space. As a result a number of house types were swapped around and slightly moved.

## EAST AREA

In order to maintain sufficient privacy between the existing dwellings located along Hillfoot Close and Newdales Close and the new dwellings proposed on plots 23 to 33, a 2m high close board fence should be erected along the boundary. The development is now considered acceptable and of a high environmental standard. Car parking is provided at 2 spaces per dwelling.

The proposal is acceptable in terms of the criteria set out in Policy HS4, GR7, TR9, NC7 and the Eleanor Road Development Brief of Wirral's Unitary Development Plan 2000 and RSS Policy DP3.

**Summary of Decision:** The proposal complies with Policy HS4, GR7, TR9, NC7 and the Eleanor Road Development Brief of Wirral's Unitary Development Plan and Regional Spatial Strategy policy DP3. It is therefore considered that the proposal is of such a scale as to be appropriate to the surrounding area and will not result in a detrimental change in the character of the area.

**Recommendation:** Approve

**Condition(s):**

- 1 Full planning permission: standard commencement date. (C03A)
- 2 Samples of the materials to be submitted and approved prior to commencement (C59B)
- 3 Detailed landscaping scheme to be agreed prior to commencement (C71A)
- 4 Replacement of diseased planting for a period of 5 years from completion. (C71G)
- 5 Details of floor levels and surrounding ground levels to be submitted and approved prior to commencement. (C65C)
- 6 Hardsurfacing of driveways before dwelling occupied. (C61D)
- 7 Development according to plans received on 18th May 2006. (C24C)
- 8 Prior to the dwellings hereby approved being occupied, a 2m high close board fence shall be erected along the western boundary of the development between plots 23 to 33 and the existing dwellings located on Newdales Close and Hillfoot Close and retained thereafter.
- 9 Prior to the commencement of the development details of the protective zones around tree to remain shall be submitted to and agreed in writing with the Local Planning Authority before the development is brought into use. There shall be no changes in gradient within the approved protective zones or movement of machinery through these zones.
- 10 Relevant arboricultural works should be carried out before commencement of the development.
- 11 Bat boxes shall be erected in suitable areas in and along the retained trees and woodland of which details shall be submitted to and agreed in writing with the Local Planning Authority before the development is brought into use and retained thereafter.
- 12 Details of proposed bin storage to be shall be submitted to and agreed in writing with the Local Planning Authority before the development is brought into use.
- 13 Before any works are undertaken, the site must be surveyed\* for the presence of Japanese Knotweed and a copy of this survey sent to the Local Planning Authority. Please note that Japanese Knotweed can be far more extensive than the visible parts on the surface and that the underground parts of the plant may extend laterally up to 7 meters beyond this. Therefore, this survey must also note any knotweed adjoining the site. If Japanese Knotweed is confirmed, full details of a scheme for its eradication and/or control shall be submitted to and approved by the Local Planning Authority prior to the commencement of work on site, and the approved scheme shall be implemented prior to the commencement of the use of the building(s).  
\*by an approved environmental consultant
- 14 The design of the vehicular access and parking areas, shall take account of all trees situated on or off site and must be in line with appropriate guide lines (BS 5837: 'Trees in Relation to Construction' 2005 and Arboricultural Advisory and Information Service, Practice Note 'Driveways Close to Trees 1996'). The driveway / parking areas, which are within 4 m of existing trees, must be constructed utilising minimum excavation techniques incorporating appropriate surfaces to avoid damage to trees and to withstand any influence of existing trees with regard to future potential indirect/direct tree related damage. No development shall take place until there has been submitted to and approved in writing by the local planning authority technical details of the proposed driveway / parking, which are within 4m of existing trees, to include their dimensions (in relation to existing ground levels), specifications (materials) and when they are to be constructed in relation to other development works.
- 15 Agreement to be reached on site prior to development commences on tree protection measures. (C71M)

**EAST AREA**

- 16 No development or other operations shall commence on site until adequate steps, which have previously been agreed with the Local Planning Authority, have been taken to safeguard against damage or injury during construction works, all trees on the site or whose root structure may extend within the site, which are subject of Tree Preservation Order. The Tree Preservation Orders affected are Wirral Borough Council No 60 and County Borough of Birkenhead 16/49. In particular, no excavations, site works, trenches or channels shall be cut or pipes or services laid in such a way to cause damage or injury to the trees by interference with their root structure and no soil or waste shall be deposited on the land in such a position as to be likely to cause damage or injury to the trees by affecting their root structure.

**Reason for conditions**

- 1 Standard (CR86)
- 2 In the interests of visual amenity. Policy EM6 or HS4 of the UDP (CR66)
- 3 In the interests of the visual amenities of the area. Policy GR5 of the UDP (CR79)
- 4 In the interests of the visual amenities of the area. Policy GR5 of the UDP (CR79)
- 5 To ensure satisfactory appearance and prevent overlooking. Policy HS4 (Criteria for New Housing Development) of the UDP (CR76).
- 6 Highway safety (CR13)
- 7 For the avoidance of doubt. (CR33)
- 8 In the interests of amenity. (CR17)
- 9 To protect trees which are of significant amenity value to the area. Policy GR7 of the UDP (CR80)
- 10 To protect trees which are of significant amenity value to the area. Policy GR7 of the UDP (CR80)
- 11 In the interest of protecting bat species.
- 12 To ensure a satisfactory development. (CR42)
- 13 To protect trees which are of significant amenity value to the area. Policy GR7 of the UDP (CR80)
- 14 To ensure that existing third party trees are not damaged or put under pressure of removal due to actual or perceived risk of potential driveway damage which will maintain the visual and environmental quality of the site and surrounding area.
- 15 To ensure site works adequately protect the trees. Policy GR7 of the UDP (CR81)
- 16 To protect trees which are of significant amenity value to the area. Policy GR7 of the UDP (CR80)

**Last Comments By:** 04 May 2006

**56 Day Expires On:** 17 May 2006

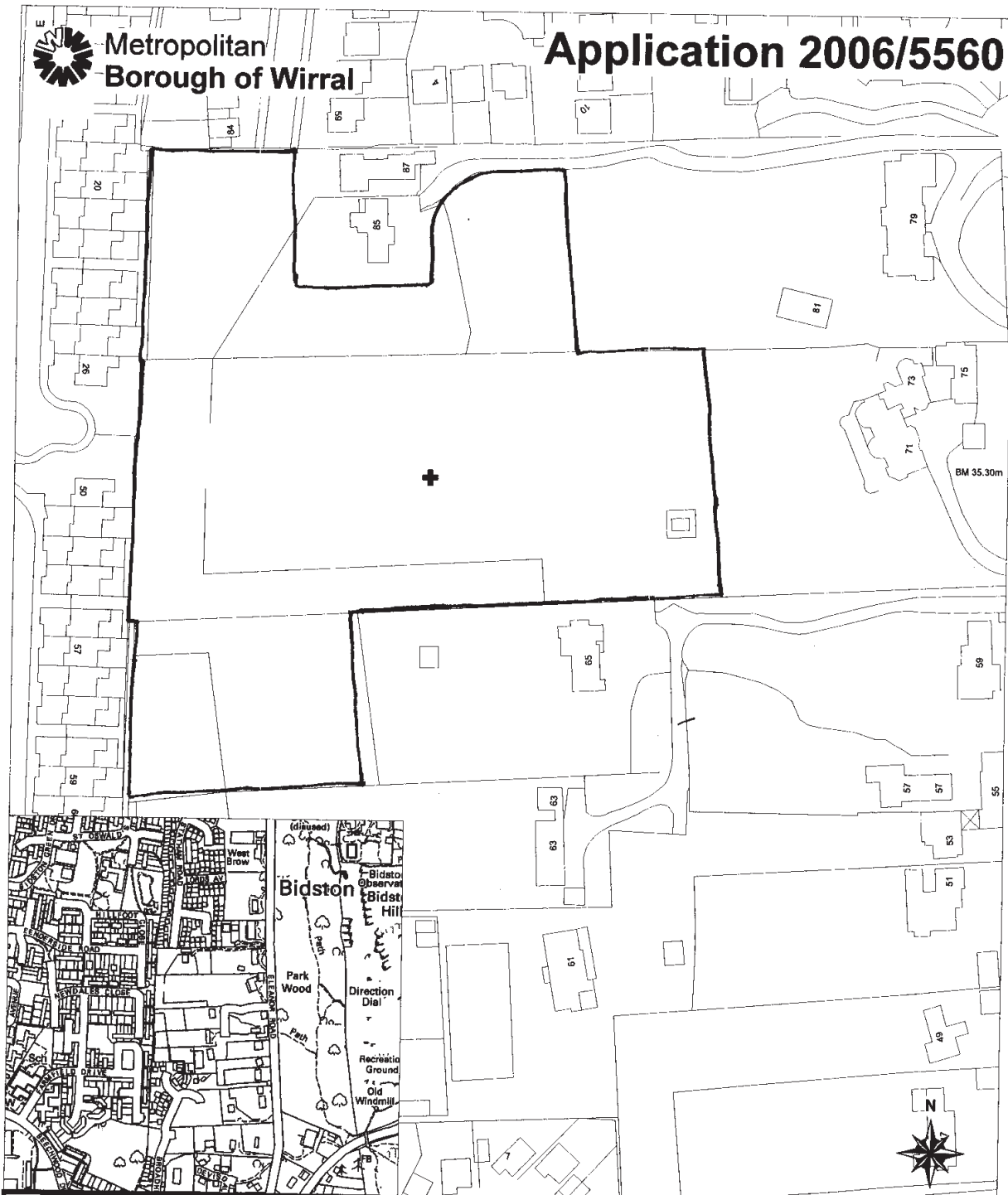
**Notes:**

## Advisory:

Japanese Knotweed has been reported on or near this site. It is a highly invasive weed that is capable of structural damage. Disturbance will cause it to spread and its movement is controlled by legislation. Under the Wildlife and Countryside Act 1981 it is illegal to cause it to spread in the Non-standard reason: wild. You are strongly advised to survey the site for the presence of Japanese Knotweed at an early stage and before any site clearance work and, if found, to formulate plans to control or eradicate it. Please note that Japanese Knotweed can be far more extensive than the visible parts on the surface and that the underground parts of the plants may extend laterally up to 7 meters beyond removal due to actual or perceived risk of potential driveway damage. Which will maintain this. Knotweed in adjoining land may affect the site and should be noted and considered. Detailed the visual and environmental quality of the site and surrounding area. Detailed advice is given in these Knotweed Web Sites:  
[http://www.devon.gov.uk/environment/natural\\_environment/biodiversity/japanese\\_knotweed.htm](http://www.devon.gov.uk/environment/natural_environment/biodiversity/japanese_knotweed.htm)  
[http://www.environmentagency.gov.uk/commodata/103599/cop\\_for\\_jap\\_knot\\_899878.doc](http://www.environmentagency.gov.uk/commodata/103599/cop_for_jap_knot_899878.doc)

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Application: 2006/5560

Location: Land adjacent to 84 Statham Road Bidston Wirral CH43 7XS

Proposal: Erection of 33 dwellings and garages and associated road works

Ward: BIDSTON AND ST JAMES

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Date : 06/04/2006



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