

REPORT OF THE DIRECTOR OF TECHNICAL SERVICES

**FINDINGS AND RECOMMENDATIONS OF THE LOCAL GOVERNMENT
OMBUDSMAN FOLLOWING INVESTIGATION OF A COMPLAINT
REGARDING MALADMINISTRATION OF A PLANNING APPLICATION**

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to inform Members of the outcome and recommendations from an investigation by the Local Government Ombudsman of a complaint arising from the maladministration, due to an error made on a planning application, and a consequent claim for compensation.
- 1.2 As the Ombudsman's award exceeds the amount that can be authorised via the Chief Officers delegated powers, this report seeks the approval of Members to pay compensation to the Complainants in the sum of £5723.00 in accordance with the Local Government Ombudsman recommendations.

2.0 BACKGROUND

- 2.1 There is a detailed planning history with regard to development on the site in question dating back to 2001. Subsequent applications have been made for a similar kind of development in 2006 and 2007, with this latter application being re-determined by the Planning Committee in 2009, following a Judicial Review.
- 2.2 The error occurred because in 2001 a planning application was submitted to the Council showing a building of similar size and in a similar location to that submitted in 2007 and approved in 2008. The building as originally applied for in 2001 was said to be 20m back from the road frontage. However, prior to that application being approved, an amended siting plan was received by the Council, which showed the building 40m back from the road frontage. It is accepted by the Council, that it was in fact, the latter amended plan which was the subject of the approval and not the original application plan. Furthermore, when the permission was renewed in 2006, it was the location 40m back that was again approved. When considering the planning application in 2007, it appears that the officer inadvertently considered the previously superseded plan from 2001 when comparing dimensions with the new application and this led to his report containing a factual inaccuracy and that this immaterial consideration was referred to when considering and determining the planning application.

- 2.3 The Council accepted that the factual error contained within the case officers report, provided the grounds for a neighbour to seek Judicial Review of the decision and did not contest the quashing of the 2007 planning approval.
- 2.4 On 16 June 2008 the Council advised the complainants that its decision to grant them planning permission was now subject to Judicial Review because its decision to approve the application was based on the measurements taken from plans attached to a previous application. The Council confirmed that it could not anticipate the outcome and suggested that the complainants would be wise to suspend their building work until the position became clearer.
- 2.5 In the event the complainants ceased building until they had an approved set of plans in mid 2009. In the intervening period they lived in a caravan and now claim compensation from the Council for the distress and financial loss they suffered as a result of the Council's error.

3.0 LEGAL VIEW OF THE LOCAL GOVERNMENT OMBUDSMAN

- 3.1 The complainants say the Council was negligent in its handling of their planning application. The Ombudsman should not, as a general rule, investigate complaints where the complainants have or have had a right of action through the courts. The Ombudsman has had to consider whether the complainants have or have had such a right. The Ombudsman doubts that the complainants could do so with any hope of success.
- 3.2 Negligence is governed by the law of tort. In order to succeed in an action in tort, claimants must show a duty of care was owed to them, that the duty was breached and that the loss they suffered as a result could reasonably have been foreseen.
- 3.3 Public authorities have no general immunity for claims in negligence and the courts recognise that it would be wrong to confer such immunity. However the courts also recognise that public funds come from the taxpayer and are not unlimited. The current legal position is that the courts are reluctant to find a duty of care where the 'damage' suffered is economic loss or psychological trauma. The courts have said, however, that they may find a duty owed if those responsible for the action complained of have acted not just negligently but with actual malice or complete indifference to the consequences of their actions. The Ombudsman finds that there is no suggestion of this in this case.
- 3.4 The Local Government Act 2000 empowers Councils to pay compensation where, as a result of maladministration, a member of the public may have been adversely affected by their actions.

4.0 FINAL DECISION OF THE LOCAL GOVERNMENT OMBUDSMAN

- 4.1 The maladministration here was not great, although as the Council readily acknowledges, the consequent injustice to the complainants was significant. There is no evidence to suggest, however, that the Council's initial error was compounded by any subsequent action it took or failed to take.
- 4.2 The complainants had to live in a caravan for about a year longer than they should have done. Although the Council was responsible for the mistake which led to this, it was not responsible for the extent of the delay, much of which was due to the High Court. However, because the High Court action was a direct result of the Council's error, it is reasonable for the Council to accept some responsibility for this time too. Some of the delay was, clearly caused by the complainants themselves and the Ombudsman has taken this into account.
- 4.3 First there was a delay of around six weeks when proceedings were arrested because of the complainant's solicitor's intervention and a further delay in obtaining the fresh planning application because the complainants had not built according to the previously approved plans and also because they had started to build a summer house and garage without planning permission. The Ombudsman finds that the Council cannot be held responsible for either of those delays.
- 4.4 The Council was not wrong to tell the complainants that legal proceedings against it were unlikely to be successful. However, it acknowledges that compensation can be paid where there has been maladministration. The Ombudsman has concluded that the payment of compensation would be appropriate in this case.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The Local Government Ombudsman has stated that she cannot be absolutely precise, but from the information available to her, she is of the opinion that it is fair to establish that the Council was responsible for 38 weeks delay. The complainants have not provided detailed receipts for items such as storage, water bottles and laundry bills that appear in their claim and the Ombudsman doubts that they would have them. Rather than suggest that the Council reimburse them for actual out of pocket costs, it is the Ombudsman's suggestion that the Council pay the complainants £10 for every additional days stay in the caravan for which the Council was responsible. The Ombudsman calculates that amount to be **£2660**. It is the further view of the Ombudsman that no liability for the purchase of the caravan should attach to the Council, whatever the cost, since it was bought in 2007 presumably to live in during the construction of the bungalow.

- 5.2 The Ombudsman does not generally recommend that Councils reimburse legal costs, but in the circumstances here, where the complainants felt that they had no one else to turn to, the Ombudsman considers it to be not unreasonable to ask the Council to refund their legal costs. The total receipted costs were **£1663.02**
- 5.3 The complainants found it necessary to secure the partly built bungalow and protect it from the weather after work was suspended in June 2008, incurring an additional cost of **£900** in doing so. The Ombudsman recommends that the Council reimburse this cost.
- 5.4 The Ombudsman states that there can be no doubt whatsoever that the whole experience was *“nerve racking and extremely distressing”* for the complainants, but that there is no evidence to suggest that the Council had acted dishonestly in any way.
- 5.5 The problem, in the opinion of the Ombudsman, is that once the complainants neighbour was given leave to apply for Judicial Review, no one locally had any control over anything. Moreover, no one could say with certainty how long the legal process would take.
- 5.6 It is the recommendation of the Ombudsman that the Council pay the complainants **£500** in recognition of the time, trouble and distress which this unfortunate experience caused them.
- 5.7 In total, the Local Government Ombudsman recommends that the Council pay the complainants £2660 plus £500 for the distress and inconvenience they suffered, plus their out of pocket expenses of £1663 and £900. A total amount of **£5723.00**

6.0 STAFFING IMPLICATIONS

- 6.1 There are no staffing implications arising as a result of this report.

7.0 EQUAL OPPORTUNITIES/EQUALITY IMPACT ASSESSMENT

- 7.1 There are no equal opportunities implications arising from this report.

8.0 HEALTH IMPLICATIONS/IMPACT ASSESSMENT

- 8.1 There are no health implications/impact assessments required as a result of this report.

9.0 COMMUNITY SAFETY and LOCAL AGENDA 21 IMPLICATIONS

- 9.1 There are no Community Safety or Local Agenda 21 implications as a result of this report.

10.0 PLANNING IMPLICATIONS

- 10.1 Processes and procedures within the Planning section have been improved to introduce a clear delineation between superseded, amended and original plans. The introduction of these improved measures will significantly reduce the probability of a similar error occurring in the future.

11.0 ANTI POVERTY and SOCIAL INCLUSION IMPLICATIONS

- 11.1 There are no anti poverty and social inclusion implications as a result of this report

12.0 HUMAN RIGHTS IMPLICATIONS

- 12.1 There are no human rights implications as a result of this report

13.0 LOCAL MEMBER SUPPORT IMPLICATIONS

- 13.1 The complainant's property is in the Leasowe and Moreton East ward.

14.0 BACKGROUND PAPERS

- 14.1 No background papers have been used in the preparation of this report

15.0 RECOMMENDATION

- 15.1 Members are asked to accept the recommendation of the Local Government Ombudsman and authorise the payment of compensation to the complainants in the sum of £5723.00

DAVID GREEN, DIRECTOR
TECHNICAL SERVICES