

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 An outline planning application was submitted in 2004 for the erection of 35 dwellings but was subsequently withdrawn by the applicant.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 A further outline application was submitted for determination in October 2005 for 31 dwellings but was withdrawn by the applicant, on the advice of officers due to problems with access arrangements.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