



22 May 2012

Agenda Item:11

REPORT OF GROUP MANAGER PLANNING

OUTCOME OF COMPLAINT REFERRAL TO LOCAL GOVERNMENT OMBUDSMAN

Purpose of Report

1. To inform Members of the outcome of a complaint referred to in the Local Government Ombudsman. The report is for noting.

Background

2. Members will recall from the end of year Development Management report presented to Committee at its April meeting that a complaint had been referred to the Local Government Ombudsman (LGO) having gone through the Council's complaints procedure. The complainant alleged that actions by the Council did not comply with its Statement of Community Involvement and, in particular, that the Council had:
 - a) Failed to engage with residents when considering an application for the retention of an existing modular classroom at a neighbouring school for a further temporary period;
 - b) Failed to notify residents about an application for the retention of existing modular classrooms at another neighbouring school for a further temporary period;
 - c) In both cases granted planning permission contrary to planning policy;
 - d) Failed to honour a commitment relating to maintenance of trees on its land; and
 - e) Had given misleading information to do with the installation of a long jump facility at a third school and also about its complaints procedure. The long jump pits, allegedly carried out without planning permission, had altered site contours thereby diverting surface water towards the complainant's property and those of his neighbours causing flooding.
3. Both applications for the retention of modular classrooms had been granted planning permission subject to conditions under delegated powers. The third

school, with the long jump pits, had subsequently become an Academy School in August 2011.

4. Members will be aware that the LGO has no powers to evaluate the merits of particular planning applications but may investigate whether maladministration by a local authority has caused injustice to a member of the public. In considering the complaint the LGO took account of documents supplied by the complainant, including the Council's responses as part of its Complaints Procedure, information on the Council's web-site and a telephone discussion with the complainant.

Decision

5. The LGO's decision is not to begin an investigation of the complaint. This is based on the LGO's view that there is no prospect that such an investigation could establish that any maladministration by the Council has caused any significant injustice. The LGO identified the key questions as whether flooding is caused or exacerbated by work done by the Council and, if so, whether the Council has any duty to take remedial action. Resolution of this, the LGO considered, turned on engineering and legal issues, not questions of maladministration.
6. The LGO recognised that the two applications relating to the modular classrooms were for the temporary retention of buildings already in place and therefore the amenity of the complainant and that of his neighbours is no different as a result of the planning permissions. The flooding issue was probably of little relevance and both delegated reports referred to relevant planning policy. The LGO did not consider there was a reasonable expectation that further engagement with residents should have taken place following their objections or that the matter should have been referred to Committee for determination.
7. The fact that two similar applications had been publicised in different ways is not necessarily wrong and the LGO recognised that case officers were entitled to take differing approaches under the discretionary powers available to them.
8. The LGO considered that several questions associated with the long jump facility did not appear to have been considered in any detail by the Council's complaints procedure on the basis that the associated school now has Academy status. The LGO does, however, comment that there is no prospect that an investigation would establish any injustice had been caused to the complainant for the same reason referred to in paragraph 6 above.
9. The LGO recognised that the Council is entitled to take a different view as to what tree maintenance is needed from that previously indicated in response to changing circumstances including financial circumstances.
10. Whilst the LGO has declined to investigate this complaint, he has offered three suggestions to promote better administration in an effort to be helpful. The LGO has stressed that they do not constitute a finding of maladministration or a formal recommendation. These are considered in turn below:

A) Information on the Council's web-site about delegated planning powers

11. Firstly the LGO notes that the Council's web-site states that officers will not determine applications where there are significant objections from consultees. The LGO comments that 'significant' is subjective and could be interpreted as meaning a large number of objections or an objection which carries much weight in planning terms. He queries whether 'consultees' include members of the public or the specialist bodies asked to comment on applications. The complainant had been advised that four letters of objection or more would trigger referral to Committee but this was not amongst the criteria listed on the web-site.
12. In response, the full details of which applications require referral to Committee are available on the web-site set out in the Constitution. Table 6 '*Matters required to be referred to Planning and Licensing Committee*' also provides clarity on the term 'significant' and distinguishes between members of the public and consultees as reproduced below for information:

'...(h) Those which have received significant objections within the statutory consultation period or other such period as agreed with the CPA, from consultees or neighbouring occupiers. (For clarification, "significant" objections requiring referral must (i) raise material planning considerations; (ii) be unresolvable by amendment to the scheme or imposition of planning conditions; (iii) involve more than three objections from separate properties).*

This will also apply to applications which are objected to by means of a petition or by more than three "standard"/duplicate letter from separate people.

*[*The case officer should liaise with the team Manager, as appropriate, to confirm whether the referral to Planning and Licensing Committee is required]*

13. Notwithstanding that the full details are available on the web-site, it is accepted that the summarised information does introduce some uncertainty. Accordingly it is proposed to update this particular web page to more accurately reflect the position set out in the Constitution.

B) Information on the web-site on the final stage of the complaints procedure

14. The LGO notes that, whilst the corporate complaints procedure page on the web-site states that complainants have the right to proceed to the final stage of the County Council's complaints procedure, namely a Member Panel, this final stage is in fact at the Council's discretion as confirmed out in the complaints procedure leaflet '*Listening to You*'. Clearly there is a conflict here and it is understood that the Corporate Complaints Team are rectifying this discrepancy.

C) Planning publicity by site notice alone in the context of the Statement of Community Involvement

15. The LGO recognises that the exercise of judgment is a necessary and important part of the planning process but comments that publicising

applications by site notice alone does not sit well with the Statement of Community Involvement (SCI).

16. The SCI sets out the minimum 'must do' publicity and importantly goes on to set out additional steps the Council is likely to undertake. In the case of the first school, and bearing in mind the application was for the retention of an existing modular classroom for a further temporary period, the publicity undertaken was reasonable and compliant i.e. site notice, neighbour letters and web-site.
17. Regarding the second application, the publicity relied on a site notice and the web-site. It therefore accorded with the minimum statutory requirements set out in the Town and Country Planning (Development Management Procedure) Order 2010 although the SCI does take the position that additional publicity over and above the statutory minimum is better practice. It is relevant to note that the second application again related to the retention of existing development for a further temporary period. Accordingly, as the LGO has observed, the SCI allows for officer discretion and also states that the Council must balance the benefits of consulting everyone who might be directly or indirectly affected against the costs and practicalities of doing so. In view of the above the publicity undertaken in respect of the second application is not considered unreasonable but, nevertheless, there is considered merit in reminding relevant staff of the policies set out in the SCI.

Conclusions

18. The LGO has confirmed that there is no prospect that an investigation would establish that the actions of the Council had resulted in any significant degree of injustice to the complainant and accordingly will not begin an investigation. The suggestions the LGO has put forward do not constitute any formal recommendation but are nonetheless useful and the Council intends to take the steps outlined above.

RECOMMENDATIONS

19. It is RECOMMENDED that Members note the content of this report.

SALLY GILL
Group Manager (Planning)

Constitutional Comments (SHB – 11.05.12)

The report is for noting only so no constitutional comments are required.

Finance Comments (DJK 11.05.12)

The contents of this report are duly noted; there are no financial implications.

Background Papers Available for Inspection

The application files available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

Electoral Division(s) and Member(s) Affected

Mansfield North Councillors Joyce Bosnjak & Parry Tsimbirdis

Report Author/Case Officer

Jerry Smith

0115 9696509

For any enquiries about this report, please contact the report author.

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May 2012 – Date Report Completed by WP Operators