



20th January 2015

Agenda Item:

**REPORT OF CORPORATE DIRECTOR POLICY , PLANNING AND
CORPORATE SERVICES**

**LOCAL GOVERNMENT OMBUDSMAN REPORT: LEARNING LESSONS FROM
COMPLAINTS**

Purpose of the Report

1. To advise Members of the publication of a recent report by the Local Government Ombudsman (LGO) that highlights lessons learned from complaints it receives in relation to planning and development. The report is for noting.

Introduction

2. On 11 December 2014 the LGO published a report entitled '*Not in my back yard: Local People and the planning process*'. It refers to experience from recent cases referred to the LGO with the aim of highlighting some of the common areas where the LGO finds fault. It has been prepared in an effort to help people understand more about the LGO's role in subjecting planning decisions to independent scrutiny and putting things right where a fault has been identified.
3. In highlighting some areas of good practice, the report suggests ways in which councils can increase transparency in the way they reach decisions. Information is also included to assist local councillors in supporting constituents in lodging complaints to the LGO and help in their role of scrutinising council practice.
4. In the first year of the LGO, 1974, more complaints were received about planning than any other area. Forty years on it remains one of the most complained about topics and the report has been prepared to help share information arising from the LGO's investigations.
5. Most planning related complaints are from objectors who disagree with a council's decision to grant planning permission and generally arise where people are unable to understand how the planning process works and how their objections have been considered. The LGO recognises, however, that decision makers are limited in what they can consider and cannot take account of the strength of local opposition to a proposal. This can leave objectors feeling their voices have not been heard and can put

councillors in a difficult position when asked to make decisions on controversial developments.

Legal Background

6. The first section of the report sets out the legal background for councils and the roles of the public, local councillors and the LGO in the planning process. Reference is made to the applications normally being determined in line with the local plan, taking account of emerging policy documents and government policy such as the National Planning Policy Framework.
7. The report notes that councils are not under any duty to 'consult' local people, rather they are legally required to publicise applications in the local area to inform people how to make comments. Councils must consider any comments received.
8. Councils generally publicise applications through one or more of the following:
 - a) Writing to people in neighbouring properties;
 - b) Putting up a notice near the application site;
 - c) Placing an advertisement in a local newspaper.
9. The report comments that councils are not required to write to people in neighbouring properties in every case unless their own policies require them to do so. The point is made that it is important that people pay attention to site notices and press notices in their local area, although NCC's practice is to write to those people most directly affected in line with the County Council's Adopted Statement of Community Involvement.
10. Commenting on applications can help people contribute to decisions although it is recognised that councils are unable to give weight to some of the common issues raised by objectors. Councils can only take account of material planning considerations and Members will recall receiving recent advice circulated on this subject. Controversial applications can generate organised campaigns, petitions and pro-forma letters of objection. However, the volume of local opposition is not a material planning consideration and the report advises that local people are more likely to be heard if their objections target material considerations.
11. Objectors regularly say officers have warned councillors on planning committee that the council will incur costs if a decision to refuse planning permission is overturned at appeal. The LGO comments that this is a relevant consideration for officers and councillors as defending decisions not based on material planning considerations is not a good use of public money.
12. The report notes that as objectors have no right of appeal, in terms of planning the LGO is often the only route of redress with court action

being a costly option. The role of the LGO is to offer free and independent adjudication on unresolved complaints about councils. There is some misunderstanding that the LGO acts as an appeal body whereas it is confined to investigating complaints about fault causing personal injustice. The LGO investigates whether there is any fault in the way the council reached a decision and, if so, whether it is likely that a different decision would have been reached if there was no fault.

13. In 2013/14 councils in England dealt with over 400,000 planning applications and the number of complaints received by the LGO represented less than 1%.
14. The report refers to the role of councillors noting that most constitutions allow local councillors to 'call in' applications for determination at committee that would otherwise be delegated to officers. It notes that decisions on planning applications are administrative rather than political requiring them to be made in line with the law and not on political affiliations or public pressure.
15. Reference is made to instances where decisions are made contrary to an officer's recommendation and highlights that reasons must be provided taking account of material planning considerations. Failure by committee or officers to give adequate reasons exposes the council to the costs of defending a decision that may not be defensible. The report refers to advice produced by the Local Government Association exploring the complementary roles of officers and councillors in the planning process entitled '*Probity in Planning*' which can be viewed through the following link:
<http://www.pas.gov.uk/documents/332612/6482760/Probity+guide+for+cilrs+revised/25ed9243-0850-49fa-8e1a-4eb3935084a2>
16. Fault in the planning process can lead to the LGO recommending councils pay significant financial remedies in addition to incurring legal costs in correcting their mistakes. Where fault is identified, only very exceptionally would a revocation order be made to overturn the decision. This is because injustice can usually be remedied at much lower cost to the public purse and it would be unfair to penalise applicants for council mistakes.
17. Scope may exist for informally negotiating an amendment to a permission such as installation of obscured glazing or appropriate boundary treatment. Where it is not possible to reduce the effects of a development, the LGO may recommend the council pays the complainant the loss of value to their property. This usually entails a 'before' and 'after' valuation carried out by the District Valuer.

Common Faults

18. The majority of the complaints the LGO receive about planning are from people who object to a council's decision to grant planning permission. The next section of the report highlights some of the more common faults

and includes a series of case studies demonstrating the impact of poor planning decisions. These case studies highlight issues such as:

- a) Failure to check the validity of an application;
 - b) Errors in advertising applications;
 - c) Failure to consider objections;
 - d) Failure to explain reasons for decisions properly;
 - e) Failure to consider the impact on neighbouring properties;
 - f) Allegations of bias; and
 - g) Failure to take enforcement action.
19. Particular reference is made to the failure of councils to consider their own policies and procedures. A case study cites an example of a council failing to apply to itself for permission for works at a council-run school and therefore failing to apply the same standards it requires of external developers.

Getting Things Right

20. The final part of the report includes a check list of good practice based on the LGO's experience of good administration from councils. Much of this content is already standard practice for officers within NCC's Planning Group and includes the following recommendations:
- a) Photographing Site Notices to provide evidence of their posting and compliance with statutory requirements;
 - b) Issuing neighbour notification letters using a variety of tools including checking on site;
 - c) Keeping a clear record of site visits, again with photographs;
 - d) Summarising objections in officer reports;
 - e) Making reports easy to find on council websites;
 - f) Maintaining a good understanding of the council's constitution and code of conduct;
 - g) Develop a policy for dealing with amendments to planning applications and decisions; and
 - h) Develop an Enforcement Plan to manage enforcement proactively.
21. Members are advised that work is currently being undertaken to review NCC's Enforcement Plan.
22. The report then lists a series of key questions which elected members may wish to ask officers locally. These include:
- a) Does the council conform with the good practice check list?
 - b) What type of applications are currently decided by officers and should this be reviewed?
 - c) How does the 'call in' procedure work and how often is it used?
 - d) How many of the council's decisions are overturned by the Planning Inspectorate?

- e) How many complaints does the council receive about decisions on planning applications, what are the outcomes and how has the council used them to improve its services?
23. The report concludes by confirming that if the LGO finds something wrong, it can ask the council to take action to put it right. What is recommended depends on the particular complaint, seriousness of the fault and how the complainant was affected. The LGO has no legal power to force councils to follow its recommendations but they invariably do so. Such recommendations may include apologise, pay a financial remedy and/or improve its procedures so similar problems do not recur.
24. Further information is available at www.lgo.org.uk where a copy of the report in full can be viewed along with other information.

Conclusions

25. This report is to be welcomed as providing some useful lessons which have emerged from the LGO's experience in dealing with complaints related to planning and development. It is encouraging to note that the good practice recommendations suggested within the report are already standard practice for officers dealing with planning applications and enforcement matters.

Statutory and Policy Implications

27. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Human Rights Act Implications

28. Relevant issues arising out of consideration of the Human Rights Act have been assessed. Rights under Article 8 (Right to Respect for Private and Family Life), Article 1 of the First Protocol (Protection of Property), and Article 6 (Right to a Fair Trial) are those to be considered. In this case, however, there are no impacts of any substance on individuals and therefore no interference with rights safeguarded under these articles. Issue arising out of consideration of the Human Rights Act are assessed as part of the planning process.

RECOMMENDATIONS

- 1) It is RECOMMENDED that Members note the report.

JAYNE FRANCIS-WARD
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Constitutional Comments

This report is for noting only. [SSR 24.12.14]

Financial Comments

There are no specific financial implications arising directly from this report. [SEM 2.01.15]

Background Papers

None

Electoral Divisions and Member(s) Affected

All

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