



Northern Ireland

**Public Services**  
Ombudsman

# Investigation Report

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## Investigation of a complaint against Newry, Mourne and Down District Council

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**NIPSO Reference: 17326**

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**Publication date: January 2019**

## **The Role of the Ombudsman**

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities. She may also investigate and report on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Where the Ombudsman finds maladministration or questions the merits of a decision taken in consequence of the exercise of professional judgment she must also consider whether this has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. The Ombudsman may recommend a remedy where she finds injustice as a consequence of the failings identified in her report.

The Ombudsman has discretion to determine the procedure for investigating a complaint to her Office.

## **Reporting in the Public Interest**

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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## **NOTE ON LOCAL GOVERNMENT REFORM - TRANSFER OF PLANNING POWERS**

On 1 April 2015 the majority of planning functions transferred from central government (the former Department of the Environment) (the Department) to District Councils in Northern Ireland as set out in the Planning Act (NI) 2011. From 1 April 2015 District Councils are responsible for:

- i. Local development planning – creating a plan which will set out a clear vision of how the council area should look in the future by deciding what type and scale of development should be encouraged and where it should be located;
- ii. Development management – determining the vast majority of planning applications; and
- iii. Planning enforcement – investigating alleged breaches of planning control and determining what action should be taken.

The planning application to which this complaint relates R/2014/0449/F was received by the Department on 26 August 2014 and was granted planning permission on 31 August 2016. Following the transfer of planning functions from the Department to the Councils on 1 April 2015 the Department transferred responsibility for the processing of this application to Newry, Mourne and Down District Council (the Council).

The Local Government Act (Northern Ireland) 2014 (the 2014 Act) makes provision for the continuity between the Department as the transferor and the Council as the transferee, in relation to certain statutory functions (Schedule 8 paragraph 3 of the 2014 Act) as follows:

### ***Continuity***

***‘3.—(1) In any statutory provision or document—***

*any reference to the transferor is, in relation to any time after the transfer date, to be construed as a reference to the transferee.*

*(2) Sub-paragraph (1) applies unless contrary provision is made by or under this Act or the context otherwise requires.*

*(3) A transfer by virtue of a scheme does not affect the validity of anything done by, or in relation to, the transfer or before the transfer date.*

*(4) Anything which—*

*continues to have effect to the same extent and subject to the same provisions as if it had been done by, or in relation to, the transferee.*

*(5) Anything (including any legal proceedings) which—*

*may be continued by or in relation to the transferee'.*

The effect of the transfer of functions and the continuity provision outlined above is that District Councils (after the transfer date) became responsible for the decisions and actions of the Department taken prior to the transfer date. The Transfer Date is the 1 April 2015. Therefore in accordance with the transfer and continuity provisions in relation to planning functions I will refer to all actions by the Department (in this report) as if they had been taken by the Council and any reference to the former Department of the Environment is to be construed as reference to the Council.

## SUMMARY

I received a complaint about the handling of a planning application by the Divisional Planning Office of the former Department of the Environment (the Department) and Newry, Mourne and Down Council.

The majority of planning functions transferred from the Department to Councils in April 2015. The planning application was, at that time, transferred to Newry Mourne and Down Council.

### Issues of Complaint

I accepted the following issues of complaint for investigation:

Issue 1 – Was the planning application correctly processed?

Issue 2 – Were the Council's communications with the applicant reasonable?

Issue 3 – Was the Council's handling of the applicant's complaint adequate?

### Findings and Conclusion

I found the following instances of maladministration in the planning process which resulted in injustice to the applicant:

- (i) Failure to provide him with information about the additional refusal reason in a timely manner.
- (ii) Failure to provide him with an adequate response to his complaint.
- (iii) Excessive delay and failure to respond to the stage one and stage three complaint.

I am satisfied that the maladministration identified above caused the applicant to experience the injustice of upset, frustration, uncertainty and the time and trouble in bringing his complaint to my office.

I recommended that the Council issue him with an apology for the failings which I have identified in paragraph 100, within **one** month of the date of my final report.

In addition, I recommended that the Council make a payment of £500 by way of solatium for redress in respect of the injustice of upset, frustration, uncertainty and the time and trouble identified above, within **one** month of my final report.

I also found instances of maladministration in the planning process which did not result in injustice to the applicant:

- (i) Failure to create a full record of the discussions that occurred during the planning meeting 11 April 2016.
- (ii) Failure to explain or record the rationale for the decision made by the Planning Committee on 31 August 2016.

I have not found maladministration in the planning process in relation to the following matters:

- (i) The recommendation to refuse planning permission in planning report one.
- (ii) The recommendation to refuse planning permission in planning report two.
- (iii) The misunderstanding in relation to the nearby apartments.
- (iv) The need to retain or re-engage planning consultant.
- (v) The involvement of the planning manager in the Council's response to the stage one complaint.

I considered that in this case there were a number of lessons which provided the Council with an opportunity to improve its service. I welcome the service improvements made by the Council which are outlined in paragraph 106 and I recommend that the Council provides me with evidence of these improvements within one month of the date of this report.

## THE COMPLAINT

1. I received a complaint about the handling of a planning application by the Divisional Planning Office of the former Department of the Environment (the Department) and Newry, Mourne and Down Council. The majority of planning functions transferred from the Department to Councils in April 2015. The planning application was, at that time, transferred to Newry Mourne and Down Council.
2. The applicant complained that during processing of the 2014 application the planning officer refused to take account of issues raised by his planning consultant in relation to a refusal notice on the application. He complained that despite his planning consultant putting forward a robust case in relation to the application meeting and the relevant planning policy requirements, the planning officer refused to alter her decision. The applicant considers therefore that the recommendation to refuse planning permission was flawed.
3. He cited the subsequent unanimous decision of the Council's Planning Committee to grant permission for the 2014 application as support for his position. He stated that *'the Committee members were in complete support of my application and questioned at length as to why it had even reached the meeting as it was clear no breach of policy was made in the application'*.
4. He also complained that the Council's responses to his complaint were insufficient and had not given detailed consideration of the issues. He was also concerned about the suitability of the person handling stage one of his complaint.

### Issues of Complaint

5. The issues of complaint that I accepted for investigation were:  
**Issue 1** – Was the planning application correctly processed?  
**Issue 2** – Were the Council's communications with the applicant reasonable?  
**Issue 3** – Was the Council's handling of his complaint adequate?



## INVESTIGATION METHODOLOGY

6. In order to investigate the complaint, the Investigating Officer obtained all relevant documentation from the Council; its comments on the issues raised; and information relating to the Council's handling of the complaint.

### **Independent Professional Advice Sought**

7. After consideration of the applicant's response to the draft report, I obtained independent professional advice from a planning expert.
8. The information and advice which have informed my findings and conclusions are included within the body of my report. The IPA has provided me with 'advice'. However how I have weighed this advice, within the context of this particular complaint, is a matter for my discretion.

### **Relevant Standards**

9. In investigating complaints of maladministration, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case.
10. The general standards relevant to this complaint are the Ombudsman's Principles<sup>1</sup>:
  - (i) The Principles of Good Administration (Appendix two)
  - (ii) The Principles of Good Complaints Handling (Appendix three)
11. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of the Council and individuals whose actions are the subject of this complaint. The specific standards relevant to this complaint are:
  - (i) The Planning Act (Northern Ireland) 2011
  - (ii) Creating Places – achieving quality in residential developments, May 2000

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<sup>1</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

(Creating Places)

- (iii) The Strategic Planning Policy Statement for Northern Ireland, 2015 (the SPPS)
  - (iv) Planning Policy Statement 7 – Quality Residential Environments, 2001 (PPS7)
  - (v) Planning Policy Statement 7 (Addendum) – Safeguarding the Character of Established Residential Areas, 2010 (PPS 7 Addendum)
  - (vi) Development Management Good Practice Guide, April 2009 (the Good Practice Guide)
  - (vii) The Council Planning Committee Operating Protocol, May 2016 (the Council Protocol)
  - (viii) The Council Complaints, Comments and Compliments Procedure (the Complaints Procedure)
  - (ix) The Online Planning Portal advice section.
12. Where I receive a complaint of maladministration in the planning process my role is concerned primarily with an examination of the administrative actions of the relevant public service provider. I cannot challenge the merits of a decision by a planning authority unless that decision was attended by maladministration.
13. I have not included all of the information obtained in the course of the investigation in this report; however, I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings.

## MY INVESTIGATION

### Issue 1 - Was the planning application correctly processed?

14. The applicant complained that the planning officer involved in the 2014 application did not take account of the information provided by his planning consultant. This information was conveyed in the meeting on 11 April 2016. He complained also that he did not require the services of a planning consultant after the meeting as the planning officer ought to have admitted she was wrong and approved his application. He also complained that the planning officer's misunderstanding in relation to

whether the nearby apartment building was a mixture of retail units and apartments or retail units with their own living accommodation above them, resulted in a flawed recommendation in the second planning report. As a result of this failure, he complained that the application had to be considered by the Council's Planning Committee.

15. I have reviewed PPS7 and the addendum to PPS7 as these formed the basis for the planning officer's recommendation for refusal of the application which it is asserted was contrary to criteria (a) of policy QD1 (PPS7) and to policy LC1 (PPS 7 Addendum).

16. I refer to policy QD1 which states that:

*'planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment'. The policy QD1 also states: 'in established residential areas proposals for housing development will not be permitted where they would result in unacceptable damage to the local character, environmental quality or residential amenity of these areas'.*

17. That policy outlines a number of criteria for residential developments. I refer to criteria (a) which is of particular relevance:

*'the development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas'.*

18. I refer also to policy LC1 (appendix five) which states that:

*'In established residential areas planning permission will only be granted for the redevelopment of existing buildings, or the infilling of vacant sites (including extended garden areas) to accommodate new housing, where all the criteria set out in Policy QD 1 of PPS 7, and all the additional criteria set out below are met:*

- (i) The proposed density<sup>2</sup> is not significantly higher than that found in the established residential area;*

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<sup>2</sup> Density is generally considered to be the calculation of dwellings per hectare.

- (ii) *The pattern of development is in keeping with the overall character and environmental quality of the established residential area; and*
- (iii) *All dwelling units and apartments are built to a size not less than those set out in Annex A.'*

19. I have reviewed the overarching planning guidance Creating Places and SPPS (which came into effect in September 2015) in relation to density. This guidance states:

*'development in low-density areas, particularly on smaller and in-fill sites, should aim to provide or reinforce local character and identify and avoid the monotony of suburban sprawl'* and SPPS states *'Within established residential areas it is imperative to ensure that the proposed density of new housing development, together with its form, scale, massing and layout will respect local character and environmental quality as well as safeguarding the amenity of existing residents'*.

20. The 2014 application was approved by the Council's planning committee, contrary to the planning officer's recommendations. I have reviewed the Protocol established to ensure that the Planning Committee makes *'decisions in a sound, lawful and transparent way and in a timely and efficient manner.'* The Protocol covers all areas of business for the Planning Committee, including members duties when decisions are made that are contrary to planning officer recommendations. These requirements are as follows:

- (i) *'Any such decisions may be subject to legal challenge and Members must therefore ensure that the rationale for the decision is fully explained and based on proper planning considerations.'*
- (ii) *The Chief Planning Officer or Senior Planning Officer and/or the Council's Legal Advisor will always be given the opportunity to explain the implications of the committees decision prior to a vote being taken on any such proposal;*
- (iii) *The reasons for the decision contrary to the Officers recommendation must be formally recorded in the minutes and a copy placed on the planning application file/electronic record.'*

21. I have also reviewed the online planning portal. In the general advice section of the portal there is a question 'Do I need to appoint an agent/consultant?' The response

to this question is:

*'You are under no obligation to use an agent or planning consultant. However if you are unfamiliar with the planning process in Northern Ireland, you may wish to consider appointing an agent or planning consultant to act on your behalf.'*

22. As part of the investigation I have examined the planning file and a chronology for the 2014 application, was prepared.
23. I note from the planning file that the 2014 application was initially made to the Department. It was an application for the demolition of an existing two storey dwelling in Newcastle, County Down, and the construction of two detached dwellings. A single two storey apartment block, containing four apartments was also proposed in the 2014 application. The applicant had received planning permission from the Department, in 2007, for this proposal which was due to expire on 27 August 2014.
24. The professional planning report states that *'Further to the approval of a previous approval ... on site a number of changes have been made to the policy framework, with particular reference being made to the second addendum of PPS7 – Safeguarding the Character of Established Residential Areas which was adopted in August 2010.'*
25. The conclusion of the assessment in planning report one is that that the application did not meet criteria (a) and (b) of Policy LC1 because of the following:
  - (i) The density of the proposed development was 29.3 dwellings per hectare, as opposed to the current density of 4.8 dwellings per hectare. An analysis was also conducted on other nearby properties with the density ranging from 7.6 dwellings per hectare ... to 9 dwellings per hectare. The planning officer concluded that *'the proposed density is not in harmony with adjacent housing and if deemed acceptable would detract from the established character of the surrounding area and also set a precedent for future redevelopment of adjacent sites which would completely destroy the existing pattern of development in this area of Newcastle.'*

- (ii) In relation to criteria (b) the officer concluded that in her opinion the higher density of the proposed development would negatively impact upon and detract from the character of the local area and does not meet criteria (b).
26. I note planning report one also stated that the 2014 application would cause unacceptable damage to the local character of the area, when assessed against criteria (a) of planning policy QD1.
27. Planning report one was signed on 26 November 2014. On 15 December 2014 the application, with planning report one, was presented by the Department to the then Newry and Mourne District Council<sup>3</sup> with a recommendation to refuse permission. A deferral was granted to allow a meeting to take place between the applicant, his planning consultant and the planning officer. The purpose of this meeting was to allow the planning applicant and the planning officer to discuss the application with a view to finding a solution. This meeting was originally scheduled for February 2015. I note however the meeting was postponed several times at the applicant's request.
28. The meeting was eventually held on 11 April 2016. The applicant was unable to attend. However his planning consultant did attend. Prior to this meeting the planning consultant submitted, to the planning officer, his assessment of the planning application for her consideration. In that submission the planning consultant provided counter arguments to the planning officer's assessment. The planning consultant argued as follows:
- (i) There were a number of 2-dwelling groups of properties in the immediate area with densities of around 20 dwellings per hectare and that *'the proposed dwellings therefore appear to be entirely consistent with the character of the area in terms of their density.'*
- (ii) Apartments are not an *'alien form of development'* in the area. A development of 5 apartments nearby (61 meters from the application site) had a density of 71 dwellings per hectare which was substantially greater than the density of the proposed apartment block (28.5 dwellings per hectare).

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<sup>3</sup> On 1 April 2015, the number of councils in Northern Ireland reduced from 26 to 11 and the former Newry and Mourne District Council became Newry, Mourne and Down District Council.

(iii) The policies utilised by the planning officer in her assessment of the application *'don't provide a blanket ban on increased density in established residential areas. The overarching principle is whether any unacceptable harm will occur to change the character of the area as a result of any increase in density and whether the increased density would be "significant" in some way.'*

29. The planning consultant concluded in his submission to the planning officer that he had:

*'advised [the applicant] that the proposal appears generally consistent with the density of the development found in the areas and that I [the planning consultant] see no harm whatsoever occurring to the character of the area. It appears consistent with the relevant planning policies.'*

30. On 15 August 2016 Councillor Clarke contacted the senior planning officer, on behalf of the applicant, for an update on the 2014 application. He was informed the application was due to be presented at the Planning Committee scheduled for 31 August 2016, with a recommendation to refuse.

31. A second professional planning report had been compiled by the planning officer and signed on 15 August 2016 .

32. The planning officer made additional comments in the second report relating to the planning consultants submission:

(i) *'Though the [...] residential area is characterised by a wide variety of dwellings with considerable diversity in the scale, proportions, massing and appearance, there is a noticeable contrast in the form and density along this specific road frontage compared to the more densely developed housing surrounding.'*

(ii) *'The agent also makes reference to [another] development ... however it is unclear how this is of relevance to the current proposal, representing as it does a local shop with hair dressers with living accommodation above. There was always a shop on this site and that use remains with the addition of living accommodation above. The context for this development is not similar to the*

*current proposal. There is no policy that would preclude apartment development within this residential area so long as the development created a quality residential environment in accordance with PPS7 and APPS7.'*

(iii) *'A development of 2 dwellings and 4 no. apartments with ancillary areas of hard standing would be a visibly more intensive form of development (approx.. 29 dwellings per hectare) out of character with the more loose density of development apparent **along this stretch** (my emphasis) [...] which is markedly different to the transitional density and layout of development that is evident in the remainder of development in the [...] area.'*

33. On 18 August 2016 the applicant was informed by the planning officer that an additional reason had been added to the refusal of his application. This related to the increase in noise and disturbance that could be caused by bringing cars, service vehicles etc. on site to service six units as opposed to one.
34. As a result, the applicant attempted to have the 2014 application removed from the Council schedule in order to have a noise survey conducted. This request was refused by the chief planning officer.
35. On 31 August 2016 the 2014 application was considered by the planning committee, where the recommendation to refuse was overturned. The Committee granted planning permission as a result of a unanimous vote in favour of the 2014 application.
36. In his letter dated 13 February 2017, in response to the investigation of the complaint the Council's Chief Executive stated:  
*'The Case Officers report and recommendation on the application reflects the material considerations to be taken into account by Council's Planning Committee in determining this application. The recommendation in the report is based on the officer's informed professional opinion. Council's Planning Committee is not bound to accept the officer's opinion. A planning committee, in exercise of its discretion, can place a different interpretation on, or give different weight to, the various arguments and material planning considerations outlined in the Case Officers report, as occurred with this application.'*



37. The Chief Executive also stated that:  
*'the planning process is often iterative in nature with Planning Officers seeking to have a dialogue regarding impediments to approval of a proposal and how they may be overcome.'*
38. In an earlier letter to this office the Chief Executive had also stated:  
*. In such matters [deciding which residences to include when considering density] a case officer is required to make a judgement in terms of identifying the characteristics and prevailing housing densities within an area. It is appropriate for the case officer to use properties in these streets as a key point of reference in establishing the density of development and general character of this area'.*

### **Analysis and Findings**

39. I note a planning meeting was held with the planning officer and the planning consultant to discuss the 2014 application on 11 April 2016. The applicant was unable to attend this meeting. Prior to this meeting the planning consultant submitted his assessment of the 2014 application to the planning officer, for her consideration.
40. The investigation has established that full records of the discussion that took place were not kept by the Council. The planning officer has made a short note on a print out of the planning consultant's submission, stating:  
*'attached pre-submission discussed. Advised proposal would be discussed given updated policy basis. Advised application likely to be presented (?) to Pl. Committee. No date given.'*
41. The third Principle of Good Administration requires bodies to be 'open and accountable' which includes the need to keep adequate records and record the reasons for decisions. The recording of discussions on planning matters is an important element of good administration. The maintenance of full and contemporaneous records can act as a 'shield' for a public body to defend its actions when challenged. The failure to record adequate notes of the discussion that took place on 11 April 2016 is therefore contrary to the third Principle of Good Administration and constitutes maladministration.

42. In the planning context to comply with the third principle of Good Administration requires that written records be completed of all discussions, between agents/applicants and planning officers, on planning applications. The records should contemporaneously document attendees, the matters considered, the reasons for decisions and future actions. As stated above I consider that the failure to record full and contemporaneous notes of the discussion that took place on 11 April 2016 is maladministration. **I uphold this element of the complaint.**
43. I note that the issue of the density of the proposed development was a crucial element for the 2014 application. In planning report one, the planning officer's assessment of current density considered the properties adjacent to the application site as well as those abutting a nearby road.
44. I note that in his assessment of density (prepared for the meeting with the planning officer on 11 April 2016) the planning consultant considered different properties.
45. I further note that the Council has no defined process or formula in relation to density comparison for these purposes.
46. I am aware that decisions in planning matters are a matter of the planning officer's professional judgement. In planning report one the 2014 application was found not to be acceptable as a matter of planning judgement and was recommended for refusal. I have found maladministration in relation to record keeping. However, I have found no evidence of maladministration in the decision making process by the planning officer which would lead me to challenge the merits of her discretionary decision to recommend refusal. **I do not uphold this element of the complaint.**
47. I note that after the 11 April meeting the planning officer compiled a second planning report. I conclude, based on the available evidence that the planning officer did take account of the representations made by the planning consultant. I have arrived at this conclusion based on the planning officer's comments and all available evidence.
48. Planning officers are required to undertake balanced judgments which often do not

meet with the expectations of applicants. It was the planning officer's decision, outlined in planning report two, that the 2014 application was not acceptable in planning terms and should be recommended for refusal. I note that prior to the 2014 application being considered by the Planning Committee this recommendation was reviewed and accepted by senior planners. I conclude that the planning officer considered the appropriate policies and it is evident that the planning consultant's views were taken into account. The report presented to the Planning Committee provides evidence to support the planning officer's judgement. I have found no evidence of maladministration in the decision making process in relation to the planning officers consideration of the 2014 application after the meeting on 11 April 2016.

49. It is clear there was a misunderstanding in relation to whether the nearby apartment building was a mixture of retail units and apartments or retail units with their own living accommodation above them.
50. Although the planning officer's description in planning report two of the nearby apartment building was inaccurate, I do not consider that this was a significant factor in her decision making. It is clear from her report that the planning officer exercised judgment when considering this application and compared density in the context of the small section of the nearby road that was noticeably different from the surrounding area. The nearby apartments, regardless of the type of building they were housed in, were not a factor in her consideration. **Therefore I do not uphold this element of the complaint.**
51. I note the applicant seeks reimbursement of the cost of engaging a planning consultant and he reiterated this point in his response to the draft report. I am unable to recommend financial redress unless the loss sustained by the person aggrieved has been caused by maladministration. The applicant chose to engage a planning consultant prior to the April meeting. There is no obligation to engage a planning consultant in the planning application process. After the April meeting there was no direction from the planning officer that a planning consultant would be necessary for the continued processing of the 2014 application. He chose to continue to engage his planning consultant after the April meeting. There is no maladministration that I

have identified which would have required him to do this. **I do not uphold this element of the complaint.**

52. I have carefully considered the actions of the Planning Committee in relation to the 2014 application.
53. I note the decision was taken at the Committee meeting on 31 August 2016 to grant permission for the planning application. This decision was contrary to the planning officer's recommendation to refuse the planning application. This is a matter entirely within the Committee's authority.
54. The third Principle of Good Administration requires public bodies to provide reasons for a decision. The minutes of the Committee meeting are limited. There is no record of the questions posed by the Committee members to the planning officer, or her response to same. There is no detail of the reasons for the decision to grant planning permission, contrary to the planning officer's recommendation. The absence of clear reasoning to support the Committee's decision is a failure to meet the third Principle of Good Administration and constitutes maladministration.
55. The Committee's failure to follow its own Protocol is a matter of concern also. The Protocol requires as follows:
- (i) *'Any such decisions may be subject to legal challenge and Members must therefore ensure that the rationale for the decision is fully explained and based on proper planning considerations.'*
  - (ii) *'The reasons for the decision contrary to the Officers recommendation must be formally recorded in the minutes and a copy placed on the planning application file/electronic record.'*
56. The failure to provide reasons for the decision and to comply with the Protocol is contrary to the first and third Principle of Good Administration, 'Getting it right' and 'Being open and accountable'. These principles require public bodies to '*follow their own policy and procedural guidance, whether published or internal*'; '*state their criteria for decision making and give reasons for their decisions*'; and '*create and maintain reliable and usable records as evidence of their activities*'. I consider these

failures to constitute maladministration although I consider there was no injustice to the applicant as a consequence of the Committee's failing.

57. The applicant complained that the planning officer did not take account of the information provided by his planning consultant. He also complained that he did not require a planning consultant after the meeting because the planning officer ought to have admitted she was wrong and approved his application. He also complained that her misunderstanding in relation to the nearby apartment building resulted in a flawed recommendation and the need for a Council Planning Committee decision.
58. I am not satisfied that the applicant's continuing to engage the services of a planning consultant at this stage was a result of maladministration by the Council. I have identified maladministration in relation to elements of Issue One. However, I am satisfied that he did not suffer injustice as a result of this maladministration given that he ultimately received approval for the 2014 application.

#### **The applicant's response to the draft report**

59. In his response to the draft report, the applicant questioned why the planning officer did not include a nearby shop and apartment building when calculating the density of the area. He also stated that he did not agree with the planning officer's view, made in the second planning report, that another street did not *'form part of the existing residential character for consideration of this proposal.'*
60. In response to the assertions of the applicant, the Investigating Officer obtained an account from the planning officer. She stated that she did not consider the shop and apartment building when calculating the density of the area as it fell outside the area she deemed appropriate to make this calculation.
61. The Investigating Officer requested advice on these specific issues from an independent professional advisor (IPA). In response the IPA advised that *'the planning officer's analysis of the area appears comprehensive and from a map study, it basically identifies a predominantly residential area.'* The IPA also informed me that she does *'not dispute the planning officers professional judgement that the*

*context for the assessment of character should be within [the areas considered].'*

Furthermore, the IPA advised me that *'...on balance I consider inclusion of the shop/apartment building within the assessment of the established residential area or the calculation of the density is unlikely to have led to a change of recommendation.'*

62. I have carefully considered the comments of the applicant, the planning officer and the IPA on this issue. I accept the advice of the IPA, in particular I note her view that the *'planning officer's analysis of the area appears comprehensive'*. I therefore remain of the view that I have not identified any maladministration by the Council in relation to its decision making when calculating the density of the surrounding area.
63. The IPA commented on the previous planning approval granted for the site. She informed me that the planning officer did not record the weight she attached to the previous approval in her assessment of the 2014 application. I consider this to be a learning point for the Council who should remind planning staff of the importance of recording the weight given to previous approvals.

## **Issue 2 – Were the Council's communications with the applicant reasonable?**

64. The investigation into the complaint has prompted me to consider the further issue of when the Council communicated to the applicant the additional reason for refusing his application.
65. I have reviewed the Protocol which applies to all Committee business. I have considered in particular the following extracts:
- (i) *'Each deputation who wishes to appear before the Committee shall submit a prepared statement in advance of the meeting'*
  - (ii) *'all information must be submitted a minimum of 5 working days in advance of the Committee Meeting to ensure that the issue can be fully processed and considered by officers prior to the Committee Meeting'*
66. As part of the investigation I have examined the planning file and a chronology for the 2014 application, was prepared.

67. On 15 August 2016 Councillor Clarke, on behalf of the applicant, contacted the senior planning officer for a report on progress. I note that two days later he was informed that the 2014 application was due to be presented at the Committee meeting scheduled for 31 August 2017. Further he was informed that the recommendation was to refuse the application.
68. On 17 August 2016 the applicant emailed the senior planning officer and left her a telephone message requesting an update. On 18 August 2016 she returned the telephone call and informed him that the application was being recommended for refusal. In that message she communicated that an additional reason for refusal had been added. This refusal related to the potential increase in noise and disturbance caused by bringing cars and other service vehicles into a total of six units.
69. The applicant requested additional time to have a noise survey conducted in response to this additional reason for refusal. This request was declined by the chief planning officer on 18 August 2016. In his email the chief planning officer stated:  
*'The focus is on the change to the character of the area and not the noise issue specifically. There is a judgement call to be made in respect of this proposal. I very much doubt that a noise survey will bring any clarity to the decision making process. If a noise survey was likely to help the Committee reach a decision I would have asked for it at a much earlier stage in the process.'*
70. In response to investigative enquiries the Chief Executive stated (in relation to the Councils process for adding refusal reasons) that:  
*'reasons for refusal of a planning application can be added at any time before a decision issues. All interested parties should be made aware of any changes and have a reasonable opportunity to make representations'.*

### **Analysis and Findings**

71. I note that the applicant was informed about the additional grounds for refusal of his application during a telephone conversation with the senior planner on 18 August 2016. I further note that he sought to address this issue in the Committee meeting but he would only have had one working day to provide a full written submission.

72. The senior planning officer had been responding to the applicant's attempts to contact her when she informed him of the additional ground for refusal on 18 August 2016.
73. I have been unable to establish from the planning file when the refusal ground was added. The planning report was signed on 15 August 2016. This would support my view that the planning officer was aware of the additional refusal ground for at least three working days prior to her informing the applicant.
74. I further note that the report was not published on to the planning portal until 18 August 2016. Therefore he could not have had access to this information earlier than that date.
75. I consider the failure to inform the applicant of a further ground for refusal of his application on or before the 15 August 2016 is contrary to the third Principle of Good Administration, 'Being open and accountable' which states public bodies should provide '*complete, relevant and timely information*'. I consider this failure amounts to maladministration. **I uphold this element of the complaint.**
76. In his complaint to this office the applicant did not complain about the communication of the additional refusal reason. However, he did complain about this issue as part of his complaint to the Council. Therefore I am satisfied that as a result of the maladministration I have identified he suffered the injustice of annoyance, frustration and uncertainty. I have made recommendations to address this injustice in the conclusion of this report.

### **Issue 3 – Was the Council's handling of the complaint adequate?**

77. The applicant complained that the Council responses into his complaint were insufficient, lacked detail and that the planning manager ought not to have dealt with the stage one complaint. This is because the planning manager was previously involved in this planning application. It was the planning manager who refused time to get a noise survey carried out.



78. The investigation into the Council's handling of the complaint has also led me to consider the issue of response times.
79. I have reviewed the Council's complaints process and the following extracts relevant:
- (i) *'Stage 1 Local Resolution – handled by the member of staff the complainant had been dealing with. Response within 5 working days....'*
  - (ii) *'Stage 2 Service Investigation – handled by the Director responsible for the service. Response within 15 Working days...'*
  - (iii) *'Stage 3 Corporate Review – handled by the Chief Executive. Response within 15 working days...'*
80. As part of the investigation I have examined the complaint file and a chronology was prepared.
81. The applicant emailed the chief planning officer on 18 September 2016 and requested that the email was registered as part of the complaints procedure. On 24 September 2016 he emailed the Council to make a formal complaint about how his application had been handled.
82. The stage one responses to these two complaints, compiled by the chief planning officer, were sent on 27 and 28 October 2016 respectively.
83. He then escalated his complaint to stage two of the complaints process. I note the response to the stage two complaint was compiled by the Director of Regulatory and Technical Services and was forwarded on 4 November 2016. In his response the Director of Regulatory and Technical Service states that he considered the chief planning officer's stage one responses to have *'dealt with'* the majority of the issues.
84. On 22 November 2016 the applicant proceeded to stage three of the Council's complaints process. The Chief Executive provided a response on 3 January 2017 stating he could not add anything further as he considered all the issues raised in the complaint had been fully addressed.

85. In response to investigation enquiries the Chief Executive advised that:
- 'I have given due regard to the issues raised by [the applicant] as have other officers referred to in [the] correspondence. The Director of the service... has carried out a thorough review of the file and spoke to relevant officers before responding at Stage 2. I am satisfied his remarks represent an honest assessment of the case'. He goes on to say that the Council 'is always willing to learn from complaints received which informs ways to better communicate to customers how its processes operate and decisions are made.'*

### **Analysis and Findings**

86. In his response to the stage one complaint dated 18 August 2016 the chief planning officer did not address all issues raised. In particular that officer failed to comment on the timing of the additional ground for refusing the application. Neither did he address the applicant's right to be informed about the additional ground for refusal in a timely manner.
87. The Council's complaints procedure describes stage two as a service investigation. In his response the Director of Regulatory and Technical Service does not provide evidence of having conducted an investigation. There are no records in the complaint file detailing how this investigation was carried out or to whom he spoke. There are also no notes detailing his rationale or findings, as opposed the chief planning officer.
88. There has been no evidence provided by the Council upon which I can conclude, on the balance of probabilities, that the Director of Regulatory and Technical Service conducted an investigation in to the complaint. Based on the available evidence I conclude that the Director relied upon the response provided previously by the chief planning officer in responding to the complaint.
89. I note that the Chief Executive's response at stage three is notably brief. In his letter the Chief Executive references considering the applicant's letter and the Director of Regulatory and Technical Services response to the stage two complaint. He does not indicate that he reviewed any of the other documentation in the case, or that he reviewed the Director of Regulatory and Technical Services investigation.

90. I note that stage three of the complaints process is entitled Corporate Review. I expect therefore that a review of all available information will be conducted as evidence of due consideration of all the issues of complaint. This is necessary to ensure the public's trust and confidence in the process. The Chief Executive's response fails to provide this evidence.
91. I consider the Council's responses to the complaint are insufficient. I am concerned that in operating its complaints process there was no investigation or challenge into the response provided by the chief planning officer at stage one. I find this failing is contrary to the second and third Principles of Good Complaint Handling, 'Being customer focused' (second principle) and 'Being open and Accountable' (third principle) which states public bodies should *'deal with complaints ... in line with published service standards where appropriate'* and to *'create and maintain reliable and usable records as evidence of their activities. These records should include the evidence considered and reason for the decisions'*. I find these standard were not met in this case and consider these failings to be maladministration. **I therefore uphold this element of the complaint.**
92. I note that the Council has a three stage complaints process incorporating Local Resolution, Service Investigation and Corporate Review. The planning manager's involvement in responding to the stage one complaint met the requirement of the Council's process. This states that the response should be handled by the member of staff that the complainant has been dealing with. The applicant had dealt with a number of members of staff, during his application, including the planning manager.
93. It is for the Council to decide which staff are appropriate to consider complaints. It is not unreasonable to have an officer from the department complained of deal with complaints about that type of work. Such officers will have the relevant knowledge of the subject to consider matters. I do not find the involvement of the planning manager in responding to the stage one complaint is maladministration. **Therefore I do not uphold this element of the complaint.**
94. I note that the response times for the stage one complaints were 48 and 23 working

days respectively. I note that in the first response the chief planning officer apologies for the delay in response. However no explanation was given for this delay. I further note that in the second response there is no explanation or apology for this excessive delay. The Council's response time did not meet the target of five working days. This investigation has been unable to establish an explanation for the delay.

95. Further the applicant proceeded with his complaint to stage three of the Council's process on 22 November 2016. The Chief Executive responded on 3 January 2017. The response time was 26 working days. This response time did not meet the target of 15 working days. This investigation has not established an explanation for this delay.
96. The delays experienced at stages one and three of the Council's complaint process were unacceptable. These delays were contrary to the Council's Complaints Procedure and to the second Principle of Good Complaint Handling, 'Being customer focused' which states public bodies should *'deal with complaints promptly, avoiding unnecessary delay, and in line with published service standards where appropriate'* and to *'keep the complainant regularly informed about progress and reasons for any delays'*. I find this standard was not met in this case and consider these failings to be maladministration. **Therefore I uphold this element of the complaint.**
97. I am satisfied that as a result of the maladministration I have identified above the applicant suffered the injustice of frustration, uncertainty and upset. I have made recommendations to remedy this injustice and to address the Council's failings in the conclusion section of my report.

## CONCLUSION

98. I have found the following instances of maladministration by the Council which resulted in injustice to the applicant:
- (i) Failure to provide him with information about the additional refusal reason in a timely manner.
  - (ii) Failure to provide him with adequate response to his complaint.
  - (iii) Excessive delay and failure to respond to stages one and three of the complaint.
99. I am satisfied that the maladministration identified above caused him to experience the injustice of upset, frustration, uncertainty and the time and trouble in bringing his complaint to my office.
100. In addition I found instances of maladministration which did not result in injustice to the applicant:
- (i) Failure to create a full record of the discussions that occurred during the planning meeting 11 April 2016.
  - (ii) Failure to explain or record the rationale for the decision made by the Planning Committee on 31 August 2016.
101. I have not found maladministration in relation to the following matters:
- (i) The recommendation to refuse planning permission in planning report one.
  - (ii) The recommendation to refuse planning permission in planning report two.
  - (iii) The misunderstanding in relation to the nearby apartments.
  - (iv) The need to retain or re-engage planning consultant.
  - (v) The involvement of the planning manager in the Council's response to the stage one complaint.
102. I recommend the Council issue an apology to the applicant for the failings which I have identified, within one month of the date of my final report.

103. I also recommend the Council make a payment of £500 by way of solatium for redress in respect of the injustice of upset, frustration, uncertainty and the time and trouble identified, within one month of the date of my final report.
104. In response to the recommendations made in my draft Investigation Report, the Council stated that it recently provided training to staff on its complaints procedure, the draft findings of this complaint and the importance of recording reasons for decisions. The Council also informed me that since September 2016 the Planning Committee and planning staff have attended a number of related training events and further training is being organised on giving reasons for decisions. The Council also advised me that planning procedures are regularly reviewed and a review is ongoing. The Council also informed me that it now audio records its Planning Committee meetings (unless confidential matters are discussed). I welcome this commitment to service improvement and I recommend that the Council provide me with evidence of these improvements within one month of the date of the final report.



**MARIE ANDERSON**  
Ombudsman

**January 2019**

## APPENDIX ONE

# PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

### 1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

### 2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

### 3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

### 4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.

- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

**5. Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

**6. Seeking continuous improvement**

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.



## APPENDIX TWO

# PRINCIPLES OF GOOD COMPLAINT HANDLING

**Good complaint handling by public bodies means:**

### **Getting it right**

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

### **Being Customer focused**

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

### **Being open and accountable**

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.

- Keeping full and accurate records.

### **Acting fairly and proportionately**

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

### **Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

### **Seeking continuous improvement**

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.