



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: 17254**

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## **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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## 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:

- 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;
- Development management – determining the vast majority of planning applications;
- Planning enforcement – investigating alleged breaches of planning control and determining what action should be taken.

This complaint relates to two planning applications (which will be referred to as the 2010 application and the 2013 application). The 2010 application was received by the Department on 21 April 2010 and was granted planning permission by the Department on 23 February 2011. The 2013 planning application was received by the Department on 11 March 2013 and was granted planning permission by the Department on 19 December 2013. The complainants complained to the Council on 10 July 2015 about the decision to grant planning permission. Following the transfer of planning functions from the Department to the Councils on 1 April 2015 the Council then became responsible for all matters relating to the 2010 and 2013 applications.

The Local Government Act (Northern Ireland) 2014 (the 2014 Act) makes provision for the continuity between the Council 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: -

- 3—(1) In any statutory provision or document—**
- (a) which relates to anything transferred by virtue of the scheme, and*
  - (b) which is in effect immediately before the transfer date,*

*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 transferor before the transfer date.*

*(4) Anything which—*

*(a) before the transfer date was done by or in relation to the transferor for the purposes of or otherwise in connection with anything transferred by virtue of a scheme, and*

*(b) is in effect immediately before the transfer date,*

*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.*

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 1 April 2015. All actions taken prior to 31 March 2015 in this case were taken by the former Department of Environment and not the Council. 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. The reader should read my findings in this context.

## EXECUTIVE SUMMARY

I received a complaint regarding the actions of Newry, Mourne & Down District Council (the Council). The complainants (a husband and wife) complained about the Council's processing of two planning applications, the alleged lack of enforcement action taken by the Council, and the Council's subsequent handling of their complaint.

### Issues of Complaint

I accepted the following issues of complaint for investigation:

- Whether the processing of the planning applications was appropriate?
- Whether appropriate enforcement action was taken in relation to breaches of planning control of the 2010 application?
- Whether the Council adequately investigated the complaint in relation to the actions (including inaction) of the Department?

### Findings and Conclusion

The investigation identified maladministration in respect of the following matters:

- Failure to consider planning policy appropriately in determining the 2013 application
- Failure to adhere to the Council's Complaints, Comment and Compliments Policy
- Delay in complaint handling

Considering the failure to appropriately consider and apply planning policy I have no faith in the decision taken by the Council in their determination of the 2013 application.

I have not found maladministration in respect of:

- (i) Whether the 2010 planning application was processed appropriately
- (ii) Whether the Council took appropriate enforcement action regarding the developer's breaches of planning control of the 2010 application.

I am satisfied that the maladministration I identified caused the complainants to experience the injustice of uncertainty, frustration and time and trouble in pursuing their complaint to my office.

### **Recommendations**

By way of remedy for the injustice, I recommended the Council issue the complainants with an apology for the failings which I have identified above, within one month of the date of my final report.

In addition, I recommend the Council make a payment of £1000 by way of solatium for redress in respect of the injustice identified above within one month of the date of my final report. I also recommend that the Council's complaints staff are reminded of the importance in dealing with complaints in a timely manner.

I am pleased to note the Newry, Mourne and Down District Council accepted my findings and recommendations.

## THE COMPLAINT

1. The complainants believe that the 2010 and 2013 applications were not processed in the appropriate manner and that the developer breached the conditions of the 2010 application. They complained that the Department did not take appropriate action regarding the breaches of planning control in relation to the 2010 application, which resulted in a retrospective 2013 planning application being submitted by the developer. They also complained about the Council's handling of their complaint.

### Background

2. On 21 April 2010 the Department received an application from a developer for a 'change of use and extension to existing golf clubhouse to provide 64 bed residential nursing home' in Killyleagh. The Department granted approval of this application on 23 February 2011, subject to conditions.

3. On 11 March 2013 the Department received a 'retrospective application for retention of a nursing home as built to include ancillary building and associated external works'. Departmental approval of the 2013 application was granted on 19 December 2013, subject to conditions.

### Issues of complaint

4. The issues of complaint which I accepted for investigation were:

Issue 1: Whether the processing of the planning applications was appropriate?

Issue 2: Whether appropriate enforcement action was taken in relation to breaches of planning control of the 2010 application?

Issue 3: Whether the Council adequately investigated the complaint in relation to the actions (including inaction) of the Department?

## INVESTIGATION METHODOLOGY

5. In order to investigate the complaint, the Investigating Officer obtained from the Council all relevant documentation together with the Council's comments on the issues raised. This documentation included information relating to the Council's handling of the complaint.

6. The complainants provided details of their complaint and copies of their correspondence with both the Council and Department to my office for the purposes of the investigation. One of my Investigating Officer also met with them during the investigation to obtain further information of relevance to their complaint.

7. A copy of this draft report was shared with the Newry, Mourne and Down District Council and the complainant for comment on factual accuracy and the reasonableness of the findings and recommendations. The information which has informed the final findings and conclusions are contained below. However, how I have weighed the evidence within the context of the complaint is a matter for my discretion.

### **Independent Professional Advice Sought**

8. After further consideration of the issues, I obtained independent professional advice from an Independent professional planning advisor (Planning IPA).

### **Relevant Standards**

9. In order to investigate complaints, 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 are the Ombudsman's Principles<sup>1</sup>:

- The Principles of Good Administration
- The Principles of Good Complaints Handling

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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.

- The Public Services Ombudsman's Principles of Remedy

11. The specific standards are those which applied at the time the events occurred and which governed the exercise of the professional judgement and administrative actions of the bodies whose actions are the subject of this complaint.

12. The specific standards relevant to this complaint are:

- (i) Development Control Manual (the Manual)
- (ii) Development Control Advice Note 9 'Residential and Nursing Homes'.
- (iii) Development Management – A Good Practice Guide (2010)
- (iv) Planning Policy Statement 1 – General Principles (March 1998) (PPS 1)
- (v) Planning Policy Statement 4 – Planning and Economic Development, (November 2010) (PPS 4)
- (vi) Draft Planning Policy Statement 4 – Industry, Business and Distribution (January 2003) (Draft (PPS 4)
- (vii) Planning Policy Statement 9 – The Enforcement of Planning Control, March 2000 (PPS 9)
- (viii) Draft Planning Policy Statement 16 – Tourism, November 2010 (Draft PPS 16)
- (ix) Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS 21) (June 2010)
- (x) A Guide to Planning Enforcement in Northern Ireland – Information Leaflet 10
- (xi) Newry, Mourne and Down District Council Complaints Comment and Compliments Policy (Complaints Policy)
- (xii) The Planning (Northern Ireland) Order 1991 (1991 Planning Order)

13. I am unable to challenge the merits of a discretionary decision, such as a planning decision based on discretionary judgment, unless I first find that it is attended by maladministration.

14. 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.

# THE INVESTIGATION

## Issue 1: Whether the processing of the planning applications was appropriate?

### Detail of Complaint

15. The complainants stated that the 2010 and 2013 applications should not have been approved by the Department given that the development was out of scale for the area and was intrusive in an area of outstanding natural beauty (AONB). They stated the 2010 and 2013 applications also adversely affected the character of the area and they should not have been approved due to visual factors, traffic problems and environmental pollution. They also complained the Department failed to adhere to PPS 21 guidelines regarding the retrospective planning application. Furthermore, they complained the development has had an impact on local tourist facilities and that the Department failed to assess the impact of the proposal on local tourism.

16. The complainants also believe that there was a failure to properly consult with all relevant bodies including the Roads Service, NIEA and the Rivers Agency in respect of the two applications.

17. In considering this aspect of the complaint, I have reviewed the 2010 and 2013 planning files. I have examined the Department's Development Control Officer's (DCO) consideration of amenity. In particular I have considered the AONB, character and size of the development, visual concerns, traffic concerns, environmental problems and issues relating to tourism. I have also examined the DCO's consideration of responses from consultations with various consultees.

### Legislative Background

18. The 1991 Planning Order requires a planning authority when dealing with a planning application, to 'have regard to the development plan, so far as material to the application and to any other material considerations'. This legislation does not define material considerations but it is accepted that these include matters such as the local planning policy, public opinion, layout, design and amenity matters; and planning history.

## **The Manual**

19. The Departmental Manual sets out the relevant procedures on the development management process and provides advice and guidance to planning staff on best practice and details certain procedures to be followed.

20. I refer to section 4.3.2 of the Manual which states *'in addressing the development proposal, both the case officer and the development management group will take consultee responses into account as a material consideration in forming an opinion on the application. The weight to be attached to individual consultee responses is a matter for planning judgement which will rest with Planning Service'*.

21. I refer to section 4.4.2 of the Manual which states *'therefore consultation with non-statutory bodies will be carried out only when necessary to inform a planning decision'*.

22. Further, at section 4.4.3 of the Manual, it states *'consultation responses will be critically examined to ensure that any further information requested is essential to inform a planning assessment of development proposals and ultimately the decision making process'*.

23. In Chapter 5, Section 5.3.1 of the Manual entitled 'Material Considerations' it states *'there are many and varied material considerations that may be relevant in the determination of a planning application. Planning law does not, however, define what material considerations are and consequently they have to be derived from a number of sources including case law.....In general terms the following material considerations are considered below:*

- (i) The Planning Policy Context*
- (ii) Need*
- (iii) Power to Impose Conditions*
- (iv) Natural Justice*
- (v) Public Opinion*
- (vi) Consultation Responses*

- (vii) *Existing Site Uses and Features*
- (viii) *Layout, Design and Amenity Matters*
- (ix) *Resource and Economic Factors*
- (x) *Social & Cultural matters*
- (xi) *Precedent*
- (xii) *Alternative Sites*
- (xiii) *Planning Gain*
- (xiv) *The Planning History*

24. I refer to Chapter 5, Section 5.3.23 of the Manual which states '*the comments of consultees are a key part of the development control process as they provide expert advice on a range of relevant matters.....it is of critical importance that the correct consultations are carried out and full consideration of the response forms part of the decision making process*'.

25. At section 5.3.28 of the Manual - Layout, Design and Amenity matters states '*the layout and design of new development and considerations of the resulting amenity impacts are a fundamental part of the development control process...the external site characteristics including the established character and nature of the surrounding area, existing land uses, environmental quality etc are also material in this respect*'.

26. I note at section 5.3.40 of the Manual it states '*the nature and extent of previous planning approvals, whether extant or expired, on or in proximity to a site is an important material consideration. The existence of a valid approval on the site is a material consideration that must be taken into account. While a planning authority is not bound by an expired permission, if a site has been the subject of a previous approval it would be difficult to resist a similar proposal unless there had been a material change in circumstances (e.g. publication of a new policy or subsequent development around the site that would have a bearing on the development being proposed)*'.

27. I refer to section 5.12.1 of the Manual which states '*DCO reports are a critical element of any planning application file and must clearly show how and why a*

*particular decision was arrived at – (iii) A comprehensive summary of all public representations and (iv) list of all consultees, summary or responses highlighting any particular area of concern identified by consultees and whether or not these issues have been resolved. Officers must deal with all relevant material considerations and include an assessment of the proposal against the relevant policy and other material considerations followed by a clear recommendation’.*

28. I note the Department’s guidance entitled ‘Development Management – A Good Practice Guide’ (the Guide). At the section of that guidance referring to roles and responsibilities, the guide states ‘*the planning service will promote meaningful public consultation and take account of representations received and actively manage consultations regarding the need to consult and the assessment of responses’.*

### **Planning Policy Considerations**

29. PPS 1, General Principles, paragraph 51 states ‘*the Council [Department] will base its decisions on planning objectives achievable under non-planning legislation, such as Building regulations or the Water Act. The grant of planning permission does not remove the need for any other consents, nor does it imply such consents will necessarily be forthcoming. However, provided a consideration is material in planning terms, it will be taken into account, notwithstanding the fact that other regulatory machinery may exist’.*

30. I refer also to Draft PPS 4, Policy IBD 6, Industrial, Business and Distribution Development in the Countryside which directs the planning authorities to IBD 8 and IBD 9, the Re-use and Adaptation of Redundant Rural Buildings for Industrial or Business use. I note that IBD 8 states ‘*planning permission will be granted for the re-use and adaptation of a redundant non-agricultural rural building for industrial or business use where all the following criteria are met:*

- (a) the building is genuinely redundant and its re-use would not result in the need for a new building as a replacement*
- (b) the building is of sound and permanent construction and is proposed for re-use and adaptation without complete or major reconstruction*
- (c) the form, bulk and general design of the building are in keeping with its*

*surrounding and any conversion work respects local building styles and materials; and*

*(d) there is sufficient room in the curtilage of the building to park the vehicles of those who will work or visit there and also to service its use, all without detriment to the visual amenity of the countryside’.*

*(e) No business or industrial activity or storage of raw materials or finished goods is to take place outside the building; and*

*(f) No new fences, walls or other structures associated with the use of the building or the definition of its curtilage or any sub-division of it will be erected if they would damage the visual amenity of the countryside’.*

31. I consider PPS 21, CTY 1 to be relevant to this case which refers to Development in the Countryside. The latter states *‘planning permission will be granted for non-residential development in the countryside in the following cases:*  
*(c) the reuse of an existing building in accordance with Policy CTY 4*

32. I note that CTY 4 refers to Conversion and Reuse of Existing Buildings. CTY 4 and states *‘planning permission will be granted to proposals for the sympathetic conversion with adaptation if necessary of a suitable building for a variety of alternative uses, including use as a single dwelling, where this would secure its upkeep and retention. Such proposals will be required to be of a high design quality and to meet all of the following criteria:*

*(a) the building is of permanent construction*

*(b) the re-use or conversion would maintain or enhance the form, character and architectural features, design and setting of the existing building and not have an adverse effect on the character or appearance of the locality*

*(c) any new extensions are sympathetic to the scale, massing and architectural style and finishes of the existing building*

*(d) the reuse or conversion would not unduly affect the amenities of nearby residents or adversely affect the continued agricultural use of adjoining land or buildings*

*(e) the nature and scale of any proposed non-residential use is appropriate to a countryside location*

*(f) all necessary services are available or can be provided without significant adverse*

*impact on the environment or character of the locality; and  
(g) access to the public road will not prejudice road safety or significantly  
inconvenience the flow of traffic’.*

### **Response to Investigation Enquiries**

33. In relation to the 2010 application the Council stated the development as built complies generally with the permission granted. The Council did not agree with the complainants that the 2013 planning application was out of scale and not in keeping with an area of natural beauty. In addition, the Council stated it considered the development proposal to have been described accurately and properly in the DCO report. It does not accept the assertion that there was a failure to protect the surrounding area, the character of the surrounding landscape and neighbouring lands from contamination and pollution. In relation to the 2013 retrospective application the Council advised it considered the development as built complies generally with the permission granted in the 2010 application. It considered any deviations from the planning permission as minor in nature.

34. The Council also confirmed all statutory consultations were carried out. My Investigating Officer enquired specifically if there was consultation with the Northern Ireland Tourist Board (NITB). The Council confirmed that on 8 December 2010 it had been noted in the Department’s minutes ‘*NITB should be consulted re – impact on tourist business – check this*’. However, the Council in responding to the investigation stated that there is an absence of information on file that this action was followed up, citing this may be because the Northern Ireland Tourist Board are not a statutory consultee.

35. The complainants complained about the Development Control Officer’s reports. I have considered extracts of the DCO reports which I consider relevant as identified under the heading ‘Assessment of Policy’ as follows:

## **The 2010 Application for Planning Permission**

36. *The site is located within an Area of Outstanding Beauty....the policy context for this proposal is difficult in that a change of use with extension is proposed as opposed to a complete new build....as the site is located within a rural area, it should in the first instance be considered against CTY 1 of PPS 21 which states that the planning permission will be granted for non-residential development in the countryside in the following cases; the re-use of an existing building in accordance with Policy CTY 4.*

37. In addition, the DCO report identified '*Policies CTY 4 of PPS 21 and IBD 8 of draft PPS 4 are both applicable in this case.* The DCO report refers in detail to policy CTY 4 of PPS 21. It also refers to policy IBD 8 of draft PPS4 and consideration of same. I refer to appendix four of this report.

38. The DCO report records as follows '*the nature and scale of the proposal is therefore appropriate to the countryside location....*

39. The DCO has recorded also in her report that '*in consideration of the objections the main points of concern relate to the ability of Ringdufferin Road to cope with the additional traffic, the impact the proposal will have on the surrounding environment given its location within the AONB and close proximity to Strangford Lough and the design of the building proposed and its impact on neighbours....*'In response to these objections, it is my opinion that the Department has satisfactorily addressed the issues of environmental impacts through consultations with NIEA and DARD [Rivers Agency], no objections have been put forward that would suggest that the change of use and extension of the building would create a detrimental impact to the area. In terms of road safety, the Department has carried out an extension (sic) consultation with Roads Service, which following consideration of the Traffic Assessment provided by the agent and the letters of objection, have no road safety issues with the proposal.'

40. The DCO recorded '*the design scale, massing and impact of the proposal on the neighbours of the site has been detailed above and it is my opinion, given the limited view of the site, that the proposal if approved and built will not have a significant detrimental impact on the character of the area....the separation distances between*

*the existing and proposed are sufficient not to cause a significant detrimental impact on residential amenity of the existing dwellings and a landscaping theme has been produced which will soften the proposal and provide added vegetation to the area which will be beneficial'.*

41. The DCO report identifies and lists the representations and objections submitted in relation to the 2010 application.

The DCO report identifies the following consultees:

Northern Ireland Water (NI Water)

Northern Ireland Environment Agency (NIEA) – Water Management Unit

NIEA – Natural Heritage Unit

NIEA - Historic Monuments Unit

DOE Roads Service

Department of Agriculture (Rivers Agency)

Environmental Policy Unit – Countryside Management Branch

The National Trust

42. Having reviewed the 2010 application DCO report, I note the subsequent responses from consultees to the Council [Department]:

43. I note that NI Water was consulted on 14 May 2010, an email from Planning Officer of 14 June 2010 states they responded that *'they would have concern regarding adequate water supply and have advised PDE be submitted to establish availability of public water.'* An email of 2 November 2010 from Planning Officer states that NI Water *'have concerns regarding an adequate water supply and require a pre-development enquiry to establish availability of public water.'*

44. I note that NIEA was consulted on 21 May 2010 and advised the Department that an application for discharge consent was required. NIEA advised the Department on 15 December 2010 that the consent to discharge application had been approved.

45. I note also that NIEA Natural Heritage was consulted on 10 September 2010. It replied on 1 November 2010 stating it had *'concerns with this proposal and considers that further information and amendments are required to the layout'* regarding planting proposals. NIEA Natural Heritage informed the Council [Department] on 9 February 2011 acknowledging amendments to the planting plan stating that it *'has no objection to the proposed development subject to conditions'* and also stated *'we do not consider that the proposal would have a significant impact to the landscape character of Strangford Lough AONB'*.

46. I note that NIEA Historic Monuments Unit was consulted. The Unit informed the Department on 1 February 2011 that it *'would have no archaeological objections to this proposal at this time'*.

47. I note also that the Department consulted Roads Service on the application. It responded on 27 July 2010, raising no objections to the proposal. There was a further consultation with the Roads Service on 27 September 2010 following letters of objection to the application. The Roads Service responded on 7 October 2010 stating that the opinion of Roads Service in reply of 27 July 2010 *'is still applicable'*. On 15 December 2010 Roads Service was consulted with a traffic assessment report provided by one of the complainants. Following receipt of this traffic assessment, the Department's undertook additional consultations with the Roads Service. Consequently, the Roads Service concluded that it had no road safety issues with the proposal.

48. The Department also consulted the Rivers Agency in relation to the application. It informed the Department on 8 July 2010 that the applicant must submit a flood risk assessment (FRA). I note that Rivers Agency was consulted again by the Department on 3 September 2010 following receipt of the FRA and was re-consulted on 18 October 2010 with an amended FRA. Rivers Agency informed the Council [Department] on 28 October 2010 *'from a drainage and flood risk perspective cannot sustain a reason why Planning Service should refuse this application'*.

49. The National Trust was also consulted by the Department in relation to the application. It informed the Department on 8 November 2010 that it wished to place its objections to the proposal. The National Trust cited this proposal was contrary to PPS 21 Policy CTY 4, the Conversion and Re-Use of Existing Buildings and that the proposal would increase the volume of vehicle traffic to and from the site.

50. Under section heading Brief Summary of DC Group Discussion, the DCO report records *'approval agreed as per DCO recommendations....see post council consideration dated 17 February 2011...approval to issue'*.

51. I note that a Development Control Group (DCG) meeting took place on the 8 November 2010 when the 2010 application was discussed with two other planning officers. The DCG recommended the approval of the application.

52. I have examined minutes from a meeting held on 8 December 2010 with the Department and the complainants. It is recorded that they stated *'Northern Ireland Tourist Board (NITB) should be consulted regarding impact on tourism and business'*....The Council [Department] clarified *'IBD 8 – already commercial use and proposal is for community facility, nature of use appropriate to countryside; building redundant since July 2009; building sound and permanent construction; adequate room for planning'*.

53. I examined notes recorded by the Divisional Planning Manager (DPM) on 17 February 2011 in regard to the 2010 application. The DPM states *'I am content that the proposal will integrate acceptably into its surroundings despite the increase in scale'*....*'Overall I do not consider an approval would adversely affect the locality and the AONB designation'*.

54. The DPM further stated *'In my view policy CTY4 of PPS 21 is the key policy for consideration and I note the case officer has exercised judgement in this matter, comparing the proposal with existing situation.....Similarly with regard to tourism PPS 16 is now "in play" in draft form and Policy TSM1 refers to safeguarding tourism assets. I do not consider that approval will undermine the inherent attractiveness of*

*the scenic area'.....'I am content that the consultations undertaken "post-Council" have addressed the issues raised by the objectors and am of the view that an approval opinion is soundly based particularly with regard to the relevant policy test CTY4 of PPS21. Setting aside PPS 4 considerations does not change this.'*

### **The Retrospective Application for Planning Permission (2013)**

55. The Department received a retrospective application for planning permission on 15 February 2013 for – *'amended scheme for approved nursing home to provide details of construction works as built plus ancillary buildings and associated external works'*. I note this application included the erection of lighting structures.

56. The DCO report for this application states *'retrospective application for retention of nursing Home as built to include ancillary building and associated external works'*.

57. I refer to the DCO report which notes *'the proposal seeks retrospective approval for the retention of the development as built - which include the demolition and rebuild of the structure with several amendments and small additions to that which was previously approved [...]'. 'In assessing this proposal, the Department acknowledge that the previous approval is a material consideration which is given substantial weight, as that which is built on site is largely that which was approved, albeit with some amendments listed below'*.

58. It is further recorded that *'It is considered that the changes are sympathetic to the overall scale, massing and architectural style of that previously approved. The amendments are not considered to detrimentally affect the amenities of nearby residents in that the extension is sufficiently separated from neighbouring dwellings so as not to affect neighbours privacy'*.

59. The DCO report identifies the following 'Consultees'  
(formerly) Down District Council (DDC) Environmental Health Service  
NI Water  
NIEA – Water Management Unit  
NIEA – National Heritage

NIEA – Historic Buildings Unit  
Department of Agriculture (Rivers Agency)  
DOE Roads Service  
The National Trust

60. Having reviewed the DCO report, I note the following responses from consultees to the Department:

- (i) The DDC Environmental Health Department replied to consultation on 25 March 2013. It advised '*environmental Health has no objections subject to NIEA Water Management Unit being satisfied as they are the enforcing authority for water pollution*'.
- (ii) NI Water replied to consultation on 22 April 2013. It provided a generic response to the 2013 application. There are no objections noted.
- (iii) NIEA Water Management Unit replied on 11 April 2013 and stated it '*had no objection to the retrospective planning application provided all relevant statutory permissions were obtained*'.
- (iv) NIEA Natural Heritage replied to consultation on 26 March 2013. It requested additional information in order to consider the proposal. The Natural Heritage's view remained the same as that of the 2010 application. It had no objections to the proposed development subject to conditions.
- (v) NIEA Historic Buildings replied to the Department's consultation on 3 April 2013. It requested a copy of stamped approved drawings prior to providing comment. It did not provide any further comment on the development proposal thereafter.
- (vi) The Rivers Agency replied to the Departments consultation on 22 April 2013 and advised '*that as there was nothing additional in the proposal from a drainage aspect then they had no objections*'.

- (vii) The Roads Service replied to consultation on 22 July 2013 and *'had no further comments to make other than it is not considered that there will be an intensification in traffic of the Ringdufferin Road as a result of this development....and the amendments proposed in this current application do not change the opinion of the Roads Service'*.

61. I note that the National Trust was consulted by the Department on the 25 March 2013 in relation to the retrospective planning application but did not respond to the request for comments. However, I note the National Trust's objections submitted in relation to the 2010 application were with regard to the original application/proposal being contrary to PPS 21 Policy CTY 4, the Conversion and Re-Use of Existing Buildings and the development would increase the volume of vehicle traffic to and from the site. I note this objection was addressed with the Roads Service.

62. I note a DCG meeting in relation to the retrospective application took place on the 2 December 2013 where the 2013 application was discussed with three planning officers. The DCG recommended the approval of the application.

63. In relation to the retrospective application (2013), the DCO recorded the following changes made to the development proposal:

- (i) *The maximum ridge height of the section to the rear of the front projecting tower has increased from 9.9m to 10.15m*
- (ii) *The height of the front projecting tower has decreased from 9.8m to 8.5m.*
- (iii) *The left hand section adjacent to the tower has decreased from 8.8m to 8.7m*
- (iv) *A number of ancillary buildings – boiler house, generator house and underground treatment works control building, have been erected.*
- (v) *The access has been amended slightly.*
- (vi) *The footprint of the building has been amended slightly – however comparison of floorspace detailed on P1 forms of approved and*

*proposed development shows a decreased in total floorspace i.e. 2779sqm (approved) 2550sqm (proposed)*

- (vii) The car parking and landscaped areas have been amended*
- (viii) The area outlined in red has been increased – particularly to the rear of the site, where the boiler house, oil and gas tanks are located’.*

### **Independent Professional Advice**

64. Enquiries were made with an independent professional planning advisor in regards to elements of the complaint. The Planning IPA advised in regards to consultation with the National Trust *‘this is a nationwide charitable organisation mainly focused on promoting and preserving places of historic interest or natural beauty for the benefit of the nation. However, it is not a statutory consultee in determining applications and consultation with the Trust is therefore at the discretion of the planning authority. The reasons why the Trust was consulted on both applications is not clear from the files, although the site is located with an area of outstanding natural beauty. There are a number of environmental designations in the locality and the list of constraints on the 2010 Planning Officer’s report identifies two designated monuments - a slipway at ringdufferin (MRD187:029) and a linear feature at Rathcunningham (MRD187:061) but there does not appear to be any concern by NT in relation to either of them. The NT objection letter to the 2010 application was on broad planning policy grounds. E-mails on the file (date stamped 15 Oct 2013) between the complainants and the NT Planning Officer identifies “concerns over continuing issues regarding effluent discharge into the Lough from the nursing home at Ringdufferin”. The following email is headed; “Re: protecting Strangford Lough” and mention is made of discussions with the coast and countryside manager for Strangford regarding monitoring the situation. It states that if any reason for concern was found regarding environmental protection issues, the necessary authorities would be informed’.*

65. The Planning IPA further advised *‘the covering letter from NT dated 4 July 2018, has an attached undated letter of objection to the 2013 scheme. This objection identifies planning policy issues, concern in relation to the Settlement limit of Killyleagh, as well as vehicle traffic concerns. There is no indication on the Case*

*Officers report dated 29 November 1013 that this letter of objection was received or taken into account. The ePIC Change Pro forma<sup>4</sup> record requests the consultation with the National Trust be closed as no response had been received following consultation on 25.03.13, presumably because the decision had been issued’.*

66. In relation to this element of the complaint, the Planning IPA advised ‘*the consultation process is a vital part of the processing of any application and if the Department considered a consultation was required, it should have awaited a response. However the determination of the application without the NT consultation response was appropriate because of the following circumstances:-*

- 1. The NT had provided a written objection to the earlier 2010 application for a similar proposal on the same site*
- 2. The issues raised were either general in nature relating either to planning policy issues or general environmental concerns in relation to Strangford Lough. These issues appear to have been addressed through the numerous statutory consultation*
- 3. The Department's duty to expeditiously determine planning applications. An excessive period of around 8/9 months had lapsed between the issue of the consultation and the final determination of the application.’*

67. In regards to the 2013 application giving weight to the 2010 application as a material consideration, the Planning IPA advised ‘*the weight to be attached to the 2010 planning application depends largely on its relevance to the determination of the 2013 application both in relation to the situation on the ground and the policy context.*

68. *The building which was the subject of the 2010 proposed change of use application was demolished, so technically the site was ‘cleared.’ The planning officer recognised this by stating “the original building on site was not retained and extended as previously approved - it was indeed demolished and essentially what has been developed on site is a new build” Demolition in itself does not constitute development as defined in Article 11(1) of The Planning (Northern Ireland) Order 1991 but the construction of a ‘new’ nursing home constitutes development requiring express approval. The construction of a new building was therefore unlawful and I understand*

*enforcement procedures were initiated to address what was perceived to be a breach of planning control.*

69. *Case law has established that if a building is demolished, the owner loses the established use which he had in relation to the building as well as the right to the existing use of the land which was in operation before the building was taken down’.*

70. *The Planning IPA further advised ‘the Planning Appeals Commission has reiterated this legal position in some appeals. In the circumstances following a demolition, any established use rights are lost and the site has a nil use. Any future development of whatever type therefore requires planning consent. In 2013 it was therefore physically impossible for works to take place either to extend the original building’s structure or to implement the change of use that had been approved by the 2010 application.*

71. *The 2013 application was a retrospective scheme to retain a newly-constructed Nursing Home and this is what should have assessed in the context of relevant planning policy. The Planning Officer’s assessment however reflected the 2010 analysis and relied heavily on Policy CTY4 of PPS 21-The “Conversion and reuse of existing Redundant Buildings.” Paragraph 21 allows for the reuse and adaptation of existing buildings in the countryside for a variety of non-residential uses, including appropriate economic, tourism and recreational uses or as local community facilities. None of its provisions however apply where there is no building to convert, adapt or reuse. Policy CTY4 therefore was not the appropriate policy context for assessment of the 2013 application.*

72. *The Planning IPA also advised ‘the over-arching policy context is Policy CTY1 of PPS 21 which identifies the types of Non-Residential Development in the countryside for which planning permission will be granted. The only bullet point within Policy CTY1 that could possibly apply in this case is for ‘a necessary community facility to serve the local rural population’. There was no assessment of the structure as a ‘community facility’*

73. *In planning terms, a nursing home is a residential institution, within Class 13 of Planning (Use Classes) Order (Northern Ireland) 2004 There is supplementary planning guidance in the form of Development Control Advice Note (DCAN) 9 'Residential and Nursing Homes'. Whilst dated in terms of current planning policy, it remains the detailed advice for consideration of the proposal in relation to general amenity issues, including design, layout and traffic aspects. Due regard is to be given to the effect on the amenity of the area both visually and with regard to noise, nuisance and general disturbance. Paragraph 3.3 states that planning permission is only likely to be granted for nursing or residential homes in the countryside in exceptional circumstances. It advises on what might be exceptional and the necessity to weigh the relevant considerations within 2 categories:*

*(1) The need to locate in the countryside.*

*(2) Impact on the countryside.*

*There was no assessment of the 2013 scheme in terms of this advice.*

74. *The Planning Officer's report makes many comparisons with the built form that had previously been on the site. The only way it would have been appropriate and reasonable to have given weight to the 2010 approval was through a comparison of the design, materials and physical impact of the two structures, provided the principle of the new building and its use on the site was policy compliant. In that context, comparisons with the nature, scale and design of the former building, as well as the impact on traffic and conservation features would have been appropriate in assessing whether the physical impact was materially different from what had been approved in 2010'.*

## **Analysis & Findings**

75. I will firstly consider the 2010 application. I note that the Manual, chapter 4, sections 4.3.2 states '*in addressing the development proposal, both the case officer and the development management group will take consultee response into account as material consideration in forming an opinion on the application*'. I refer also to chapter 5 of the Manual and in particular section 5.3.23 which states '*it is of critical importance that the correct consultations are carried out and full consideration of the response forms part of the decision making process*'. I refer to section 5.3.28

(paragraph 23 refers) states *'the layout and design of the new development and considerations of the resulting amenity are a fundamental part of the development control process...the layout, siting, design and external appearance of buildings are material considerations...including the established character and nature of the surrounding area, existing land uses, environmental quality'*.

76. I am satisfied having regard to the available evidence that the DCO considered the relevant planning policy in her consideration of the 2010 application. I note the DCO report makes reference to the AONB. The investigation also established the DCO report addressed concerns in relation to the residential amenity, character, size, traffic and visual problems and environmental problems.

77. I am also satisfied that the DCO report (2010 application) identified eight consultees. I note that each consultee was invited to provide comments on the proposed development. I note the DCO recorded in the report the date each consultee responded on the proposed planning development. I also note the DCO recorded her consideration of all comments and objections within her report.

78. Based on the available evidence and my examination of the 2010 application file, I am satisfied the Department did identify consultations relevant to the 2010 application. The DCO did so in accordance with procedural guidance set out in the Manual. I am satisfied that the Department gave due consideration to the consultation responses and objections to the proposal which I note are recorded in the DCO report.

79. In relation to the complainants concerns regarding the impact on tourism of the proposed development, I note at a meeting with Departmental officials on 8 December 2010 they complained the development had an impact on local tourist facilities. Further, they complained that NITB ought to have been consulted. In response to the Investigating Officer's enquiries, the Council was specifically asked about this issue. It stated there was a lack of information on file that the NITB had been consulted. However, the Council's view was that the lack of records within the planning file on this issue was due to the NITB not being a statutory consultee. I note

the DPM recorded her consideration of the proposal on 17 February 2011 which states *'PPS 16 is now in play in draft form and Policy TSM1 refers to safeguarding tourism assets.....I do not consider that approval will undermine the inherent attractiveness of the scenic area'*.

80. I refer to the Manual chapter 4 section 4.4.2 which states *'consultation with non-statutory bodies will be carried out only when necessary to inform a planning decision'*. I consider the decision by Department not to consult with the NITB to have been a discretionary decision. I am satisfied that the Department gave due consideration to draft PPS 16 and the potential impact on tourism in the approval of the 2010 application.

81. I am aware that decisions on planning approvals are a matter of discretionary judgement. It is clear that the Department considered the proposal and exercised discretionary judgement based on the characteristics of the site in question. This available evidence ultimately led to a discretionary decision to approve the 2010 application. I cannot question the merits of a discretionary decision taken without maladministration. In relation to the issue of the Department correctly processing the 2010 application, I have found no evidence of maladministration in the decision making process. **Therefore, I have not upheld this element of the complaint.**

82. With reference to the 2013 application, I note that the complainants complained about the proposed identification of the 2013 application as a retrospective application. I established from the DCO report the proposal states *'Retrospective application for retention of Nursing Home as built to include ancillary building and associated external works (amended description)'*. It is my view that the description of the 2013 application was appropriate and in keeping with the 2010 application.

83. I note the DCO referred to *'the proposal seeking retrospective approval for the retention of the development as built....which was previously approved under R/2010/037/F'...in assessing this proposal, the Department acknowledges that the previous approval is a material consideration which is given substantial weight, as that which is built on site is largely that which was approved albeit with some*

*amendments’.*

84. I note that section 5.3.40 of the Manual states *‘the nature and extent of previous planning approvals, whether extant or expired, on or in proximity to a site is an important material consideration. The existence of a valid approval on the site is a material consideration that must be taken into account.’*

85. The DCO report for the 2013 retrospective application identified eight consultees. It is clearly evidenced that each consultee was invited to provide comments on the existing development. Upon examination, I noted one of the consultees, NI Water, provided a generic response; further the National Trust did not respond at all. I note under the 2010 application, the National Trust’s objections were addressed with the Roads Service and consideration given to CTY 4. I accept the Planning IPA advice that the National Trust *‘was not a statutory consultee’*. I further note the Planning IPA advised that an undated letter of objection from the NT to the 2013 scheme had been received by Department albeit *‘there is no indication on the DCO report 29 November 2013 if this letter of objection was received or taken into account’*.

86. In response to the draft report, I note the complainants consider the Department’s consultation with the National Trust and Historical Buildings Unit and its consideration of their objections to the proposal, was less than satisfactory. However, I accept the advice of the Planning IPA that *‘while the consultation process is a vital part of the processing of any application and if the Department considered a consultation was required, it should have waited for a response...however the determination of the application without the National Trust consultation response was appropriate’*.

87. I am satisfied the Department recorded its consideration of the 2013 application. The DCO report identified consultations relevant to the 2013 application and did so in accordance with its own procedural guidance set out in the manual. I consider the Council [Department] gave due consideration to the consultation responses and objections which I note is recorded in the DCO report. I also consider the Council’s [Department’s] determination of the 2013 application was reasonable in the absence

of the National Trust's consultation response.

88. My investigation established the DCO report refers to the 2010 application as a material consideration in its consideration of the 2013 application. In particular, I note the DCO states *'In assessing this proposal, the Department acknowledge that the previous approval is a material consideration which is given substantial weight, as that which is built on site is largely that which was approved albeit with some amendments listed below'*. However, upon examination of the DCO report and planning file, I note the DCO recognized *'the original building on site was not retained and extended as previously approved – it was indeed demolished and essentially what has been developed on site is a new build'*. My investigation established that the 2010 planning application was for a change of use and therefore the Department assessed the 2010 planning application in accordance with policy CTY 4 of PPS 21. However, I consider once the original building from the 2010 application was demolished, then regard for CTY 4 of PPS 21 *'The conversion and reuse of existing redundant buildings'* was no longer applicable. Therefore, I consider the 2013 application could not have been properly considered using the 2010 application as a material consideration as the policy used to determine the 2010 application was invalid. I accept the Planning IPA advice that *'in the circumstances following a demolition, any established use rights are lost and the site has a nil use'*. Furthermore, I accept the advice of the Planning IPA that *'the only way it would have been appropriate and reasonable to have given weight to the 2010 approval was through a comparison of the design, materials and physical impact of the two structures, provided the principle of the new building and its use on the site was policy compliant'*. I consider the Council's consideration of the 2013 application to have failed in their consideration of the appropriate policy.

89. I further note the Planning IPA advised supplementary planning guidance in the form of DCAN 9 'Residential and Nursing Homes, *'due regard is to be given to the effect on the amenity of the area both visually and with regard to noise, nuisance and general disturbance...planning permission is only likely to be granted for nursing or residential homes in the countryside in exceptional circumstances...there was no assessment of the 2013 schemes in terms of this advice'*. Upon examination of the

DCO report for the 2013 application, I note the DCO did not give due consideration to the DCAN 9 in their determination of the 2013 application.

90. The First Principle of Good Administration, Getting it Right states ‘acting in accordance with the public body’s policy and guidance (published or internal)’ and ‘taking reasonable decisions, based on all relevant considerations’. I consider the Council did not adequately apply nor consider the Department’s policy in their determination of the 2013 application. **I consider the Council’s failure to adequately apply planning policy to be contrary to the first Principle of Good Administration. I consider this failing to constitute maladministration and therefore uphold this element of the complaint.** I would highlight that given that the decision was taken giving weight to an inappropriate consideration and not having considered planning policy appropriately I do not have any faith in the decision taken by the Council in their approving of the 2013 application. I am satisfied that as a result of the maladministration identified, the complainants suffered the injustice of frustration and uncertainty regarding the planning process.

## **Issue 2: Whether appropriate enforcement action was taken in relation to breaches of planning control of the 2010 application?**

### **Detail of Complaint**

91. The complainants stated that the Department failed to take appropriate and timely enforcement action when the developer failed to comply with the conditions outlined in the 2010 application. That is because the developer failed to remove unauthorised structures from the development site. The 2010 application was for a change of use and extension of an existing golf clubhouse for a 64 bed residential care home. However, the complainants stated that the developer demolished the original building and constructed a new building which exceeded the height of the original building. They also complained that a second storey was constructed and that the property was in fact a ‘new build’ and not a ‘change of use and extension’. They also complained that instead of enforcing planning laws the Department agreed to issue and allow a retrospective planning application to be submitted and approved. They complained about the length of time it took the Department to

address the developer's non-compliance of the 2010 application and the removal of unauthorised structures from the site.

93. I have considered PPS 9, the Enforcement of Planning Control which sets out the general policy approach that the Department were required to follow relating to enforcement action against unauthorised development. I refer to section 1, paragraph 1.2 which states '*planning procedures and decisions need to command respect, accordingly the Department's key objectives for planning enforcement are:*

- *To bring unauthorised activity under control;*
- *To remedy the undesirable effects of unauthorised development; and*
- *To take legal action, where necessary, against those who ignore or flout planning legislation'.*

94. I refer to paragraph 1.3 of PPS 9 which states '*it is essential that the Department strives to secure these objectives, otherwise the credibility and integrity of the planning system will be undermined'.*

95. I refer to paragraph 1.4 of PPS 9 which states '*the main enforcement powers available to the Department are contained within the Planning (Northern Ireland) Order 1991 (1991 Planning Order). These powers include the authority to:*

- *issue a notice requiring the submission of a planning application (Article 23). Where such a notice is served it is an offence not to make a planning application within the period specified.*
- *issue an enforcement notice stating the required steps to remedy a breach of planning control within a time period (Article 68). It is an offence not to comply with the requirements of an enforcement notice within the period specified'.*

96. I refer to paragraph 1.6 of PPS 9 which states '*where enforcement action is initiated by the Department this can be a lengthy and complex process as many cases will require detailed investigation. In addition a number of site visits may be necessary before statutory notices can be served. If such notices are then appealed*

*to the Planning Appeals Commission the process may become protracted. Ultimately a successful remedy in certain cases may only be achieved following court action’.*

97. I refer to section 3.0 of PPS 9, outlining the general approach to enforcement. At paragraph 3.2 states *‘in considering whether formal enforcement action is an expedient remedy for unauthorised development, the Department will be guided by the following*

- i. whether the breach of control would: be clearly contrary to planning policy; or unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest.*
- ii. The extent of the breach....*
- iii. the willingness of the offender(s) to remedy the breach of control voluntarily. Where initial attempts by the Department fail to persuade the offender(s) to remedy the harmful effects of unauthorised development voluntarily, protracted negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.*
- iv. the statutory time limits for taking enforcement action”.*

98. I refer to section 4.0 of PPS 9 where acceptable but unauthorised development has been carried out. At paragraph 4.2 of PPS 9 it states *‘It is clearly unsatisfactory that anyone should carry out development requiring planning permission, without first submitting an application and paying the appropriate fee. Nevertheless an enforcement notice will not be issued solely to ‘regularise’ development which is acceptable on planning grounds, but for which permission has not been sought. Therefore in circumstances where a retrospective application is requested but such advice is not followed, the Department will normally use its powers under Article 23 of the 1991 Planning Order and issue a notice requiring the submission of an application for planning permission. Where any person fails to comply with such a notice they are guilty of an offence and the Department will normally pursue court action. On summary conviction that person is liable to a fine with the potential for continuing daily fines’.*

99. At section 5.0 the issue of when unauthorised development can be made acceptable through the imposition of conditions is outlined. I refer to paragraph 5.3 which states *'if, after formal invitation to submit a planning application, the owners or occupiers of the land refuse to do so, the Department will normally use its powers'* as set out in PPS 9, section 4.2.

100. At section 6 outlining steps to take when unauthorised development is unacceptable, paragraph 6.1 states *'where unauthorised development has been carried out which, in the view of the Department, is unacceptable and for which planning permission is unlikely to be granted, a formal warning letter will be issued. This will advise the owners or occupiers of the land that the Department is not prepared to allow the development, operation or activity to remain, or where appropriate, continue at its present level of activity. The warning letter will also indicate the measures considered necessary to remedy the breach of planning control and will normally include a timescale for their implementation'*.

### **A Guide to Planning Enforcement in Northern Ireland**

101. I refer to paragraph 1, under the section headed Appeals it states *'any person who owns, occupies or controls land which is the subject of an enforcement notice, may appeal to the Planning Appeals Commission<sup>2</sup> (PAC) before the date of notice becomes effective. When an appeal has been made, the requirements of the notice are suspended until the appeal has been either determined or withdrawn'*.

102. I refer to paragraph 1, Timescales states *'Enforcement cases can be a lengthy and complex process and if a person decides to appeal an enforcement notice this may add many months to the time taken to resolve the case. It is therefore difficult to set down time scales for dealing with enforcement cases'*.

### **In response to investigation enquiries**

103. In light of the transfer of planning functions from the Department to local

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<sup>2</sup> PAC – Any person who owns, occupies or controls land which is the subject of an enforcement notice, may appeal the Planning Appeals Commission before the date of the notice becomes effective. When an appeal has been made, the requirements of the notice are suspended until the appeal has been either determined or withdrawn.

authorities in Northern Ireland, in response to investigations enquiries the Council informed my Investigating Officer that they do not consider there to have been any delays in the Department taking enforcement action on the 2010 planning application.

105. As there were two separate enforcement actions undertaken by the former DOE, I have considered each of the enforcement files separately.

106. I refer to the Department's enforcement file for unauthorized development opened 21 July 2011. Upon reviewing the enforcement file, I consider the following to be relevant. I note the following chronology:

107. On 28 June 2011: the Department received correspondence from elected representatives that the development was not being constructed in accordance with the 2010 application.

108. A site visit was carried out by Departmental officials on 21 July 2011 which confirmed the development was not being constructed in accordance with what had been approved on the 2010 application. Upon inspection the Council [Department] identified the height of the main building was above that approved and there had been changes to the layout, design and elevation of the nursing home had occurred. In addition the original building has been demolished and a new one had been built.

109. On 30 August 2011 the case officer recorded in the enforcement report that '*the building envelope is complete and landscaping works are ongoing. The Building is different than that approved by planning application [2010]*'. The case officer further recorded '*Planning Permission has been granted for a nursing home on the site, while it was approved as an extension to existing building, the visual impact and other environmental impacts of the development are significantly different from the approved scheme.....The development is accepted in principal as the approved scheme shows.....However to allow proper and full assessment and consultation on the development a planning application should be submitted*'. Recommendation '*To*

*issue a submission letter<sup>3</sup> for the retention of the building’.*

110. On 23 September 2011 an enforcement group meeting took place. At that meeting it was agreed that the developer should have a submission letter (please note the Department on occasion refer to this as a warning letter) advising that he must submit a retrospective planning application immediately for the unauthorised development.

111. On 9 November 2011 a submission letter was sent to the developer advising of the non-compliance with approved plans for the 2010 application and the requirement to submit a retrospective planning application. The Department was advised on 9 December 2011 that the site had come under new ownership. The Department therefore agreed to send a second submission letter requesting the new developers to submit a retrospective planning application.

112. On 27 January 2012 the developer did not submit a retrospective planning application, the Council [Department] therefore took formal action and served a submission notice<sup>4</sup> to the developer for alleged non-compliance with same approved plans. The developer was given 28 days to submit a retrospective planning application for the said development from the service of the submission notice.

113. On 22 February 2012 the developer submitted an appeal against the submission notice to the Planning Appeals Commission (PAC).

114. On 5 September 2012 the first PAC hearing in relation to the submission notice was held. However, the PAC hearing was subsequently adjourned until 16 October 2012.

115. On 16 October 2012 at a PAC hearing and the appeal was dismissed. The Submission notice was upheld. This Developer submitted a retrospective planning

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<sup>3</sup> A Submission Letter is a warning letter that advises the recipient of a breach in planning and what needs to be done to remedy the breach and how much time they have to remedy the breach.

<sup>4</sup> A Submission Notice requires the submission of a retrospective planning application in an attempt to regularise unauthorised development within 28 days from the service of the notice.

application on 15 February 2013.

116. The Investigating Officer has reviewed the Enforcement File for Unauthorised Structures opened on 27 January 2012 and the following chronology has been established:

- (i) On 10 September 2011 the Council [Department] received an email advising of unauthorised structures, most notably portacabins and lighting structures had been erected on the development site.
- (ii) On 9 December 2011 the Council [Department] informed the new owners of the site (paragraph 101 refers) to remove the unauthorised structures and submit a retrospective planning application.
- (iii) On 27 January 2012 the Council [Department] issued warning letters to the Developer requesting the immediate removal of the unauthorised structures.
- (iv) On 21 March 2012 a site visit by the Council [Department] confirmed the unauthorised structures were still in place.
- (v) On 24 April 2012 a further site visit by the Council [Department] confirmed the unauthorised structures remained in-situ.
- (vi) On 27 April 2012 three enforcement notices were served on the Developer for the immediate removal of the portacabins and the lighting structures.
- (vii) On 28 May 2012 the Developer submitted an appeal in regard to the enforcement notice for the removal of the lighting structures.
- (viii) On 14 June 2012 a site visit by the Council [Department] confirmed the enforcement notice has been complied with in relation to the removal of the portacabins only.
- (ix) On 15 November 2012 the Developer's agent informed the PAC that the

lighting structures that are subject to an enforcement notice, have been removed.

- (x) On 22 November 2012 the Council [Department] was formally informed the developer had withdrawn his appeal against the enforcement notice for the removal of the lighting structures.

### **Analysis & Findings**

117. The Department was informed on 28 June 2011 that the 2010 application was not being constructed and developed in accordance with the 2010 planning approval. Having examined the enforcement files for the unauthorised work, I have established the actions taken to address the breaches of a planning control culminated in the Department sent two submission letters, a submission notice and three enforcement notices to the developer about the breaches.

118. I note that following a site inspection by the Department on 21 July 2011, the planning officer confirmed that the development under construction was different to that which had been approved in the 2010 planning application. I note a further site inspection occurred on 30 August 2011 where the site largely remained as before and no changes had been implemented.

119. The investigation has established that an enforcement group meeting was held on 23 September 2011. It recommended the developer should be issued with a submission letter requiring a retrospective planning application be submitted for the unauthorised development. In accordance with policy and guidance, a submission letter was issued by the Department on 9 November 2011. I note that on 9 December 2011 the Department was informed there had been a change in ownership of the development. The Council recommended a further submission letter was issued to the new owners requesting they submit a retrospective planning application for the unauthorised development within 28 days.

120. Further, I note that a retrospective planning application was not submitted by the developer, therefore the Department served a submission notice on 27 January 2012 and the developer was again given 28 days to submit a retrospective planning

application for the development 'as built'. The investigation also established the Department received notification by the developer's agent on 22 February 2012 of his intention to appeal the submission notice to the PAC. The PAC subsequently wrote to the Department requesting information in relation to the 2010 application.

121. A PAC hearing was held on the 5 September 2012 in relation to the Department's enforcement, however this was subsequently adjourned until the 16 October 2012, where the appeal was heard and the submission notice upheld. A retrospective planning application (the 2013 application) was submitted on 11 March 2013 and approved 20 December 2013.

122. The unauthorised structures were reported to the Department on 10 September 2011. The investigation has established warning letters were sent to the Developer requesting the immediate removal of the unauthorised structures on 27 January 2012. Furthermore, a site visit took place on 21 March 2012 and 24 April 2012. The Department confirmed the existence of unauthorised structures and subsequently served the developer with three enforcement notices on 27 April 2012. These required the immediate removal of the unauthorised structures. I note the Developer submitted an appeal to the PAC on 28 May 2012 regarding the enforcement notice for the lighting structures only. The investigation has established that by 14 June 2012, approximately two months after the enforcement notice had been served, the enforcement notice had been partially complied with. The portacabins only had been removed. I note the appeal for the lighting structures was formally withdrawn on 22 November 2012. The submission notice was complied with and the lighting structures were subsequently removed. The Developer later requested to erect lighting structures as part of the 2013 application.

123. I refer to PPS 9 which sets out the main enforcement powers available to the Department at the time. These include the consideration of a retrospective planning application as a means of addressing a breach of planning control. The nature and manner in which the Department deals with unauthorised development and structures involves the exercise of judgment leading to the making of a discretionary decision. It is my view that the decision to serve a submission notice and

enforcement notices was attended by maladministration and was an attempt to resolve the issues of the unauthorised development and structures. I am satisfied enforcement action was taken in accordance with its policy and procedure and therefore there was no maladministration in this decision making process.

124. I accept that enforcement action can be a very time consuming process which frequently can cause significant frustration to aggrieved parties who understandably expect the process to be more prompt. The Department were pro-actively attempting during the period July 2011 to February 2012 to resolve the matters involved using the submission letters, submission notice and later enforcement notices. I consider the Department were actively engaging with the developer in order to resolve the matters in a timely and reasonable manner.

125. The enforcement action taken in regard to the unauthorised development and structures was impeded. This was due in part to the change in ownership of the site, the request for an appeal for the submission notice. I note the request for an appeal for the enforcement notice. Subsequently an appeal hearing for the submission notice was held. I refer to PPS 9, paragraph 1.6 which states '*where enforcement action is initiated by the Council this can be a lengthy and complex process as many cases will require detailed investigation. In addition a number of site visits may be necessary before statutory notices can be served. If such notices are then appealed to the PAC the process may become protracted. Ultimately a successful remedy in certain cases may only be achieved following court action*'. I note at (paragraph 92), the guide states enforcement action will be suspended until an appeal has been determined. I note the appeal submitted for the submission notice took approximately seven months. I further note the appeal submitted for the enforcement notice for the lighting structures took approximately six months, albeit this appeal was withdrawn. I consider any delays that occurred during enforcement action, most notably between February 2012 and November 2012 for the unauthorised development and structures consecutively, were as a result of the PAC process and ultimately I find these delays to have been a matter outside the control of the Department.

126. The PAC upheld the submission notice on 16 October 2012. The Department wrote to the developer's agent on 28 January 2013 and advised that a retrospective planning application must be submitted no later than the 11 February 2013. As a result, the 2013 application was submitted to the Department on the 15 February 2013. However further amendments were required and a final application was submitted on 11 March 2013. Based on available evidence, I am satisfied that from 16 October 2012 to 11 March 2013 the Department was actively engaging with the developer so as to adhere to the requirements of the submission notice.

127. In conclusion, I consider the action taken by the Department to address the unauthorised development and unauthorised structures to have been in accordance with its policy and procedures. I do not consider the time taken by the Department to implement enforcement action on the unauthorised development and unauthorised structures to be excessive given much of the process was outside its control. I cannot question the merits of a discretionary decision taken without maladministration. I have found no evidence of maladministration in the decision making process with regard to the Department's enforcement action. **Therefore, I have not upheld this element of the complaint.**

### **Issue 3: Whether the Council adequately investigated the complaint in relation to the actions (including inaction) of the Department?**

#### **Detail of Complaint**

128. The complainants stated their complaint was not dealt with in a timely manner. They stated they complained to the Council on 10 July 2015 regarding the handling of the 2010 and 2013 applications and subsequent enforcement action. However, they allege that the Council did not provide a detailed or timely response to the issues raised by them. They complained about the significant delay in the Council responding to their complaint.

130. As part of investigation enquiries, I have considered the Newry, Mourne and Down District Council Complaints Comment and Compliments Procedure'. At section 1, How the Complaints Procedure Works states '*our aim is to resolve*

*problems as promptly as possible....'if something does go wrong we need to be able to put it right quickly, and take action to ensure it does not happen again'.*

131. I have reviewed the Council's complaints process and consider the following extracts relevant:

- (i) Stage 1 of the complaints policy is local resolution which states 'as a first step we would ask you to contact the member of staff you were dealing with. If this is not possible for you to talk to a member of staff or you prefer to contact us in a different way.....whatever method you use to take action, if this is appropriate. We will tell you what has happened within five working days. You will also receive an acknowledgement of any written communication within three working days'.*
- (ii) Stage 2 is service investigation which states 'if you are not satisfied with our initial response, write to the Director responsible for the service...the Director will normally send you a full written response within 15 working days of receiving your complaint'.*
- (iii) Stage 3 is corporate review which states 'if you are unhappy with the response you receive from the Director, write to the Chief Executive...you should normally expect to receive a full written response within 15 days of your complaint being received'.*
- (iv) Stage 4 is referral to Ombudsman which states 'as a final step you can take your complaint to the Northern Ireland Public Services Ombudsman'.*

132. I refer to section 7, Timescales, which states *'When a customer cannot be provided with a full response within [timescales for response during the complaints process] the customer will be notified and given a revised timescale for that reply'.*

### **In response to investigation enquiries**

133. Two responses were provided regarding this issue of complaint. In their first response on 26 February 2016, the Council stated *'it had received complaints correspondence on behalf of [the complainants] from Kieran McCarthy, MLA in July 2015 and it had responded directly to Councillor McCarthy in February 2016'.* The Council provided my Investigating Officer with a copy of this response. The Council

advised that it had undertaken planning functions in April 2015. This was approximately 15 months after the second planning permission had been granted and it was their opinion the (2010 and 2013 applications) were matters for the Department alone. It was the Council's understanding that the Department would acknowledge responsibility for these complaints and determine how they should be dealt with. However, the Council clarified *'that in light of communications from the Ombudsman's office in November 2016, they now understand that it is the Council's responsibility to investigate planning complaints and not that of the DOE'*.

134. I refer to the Council's second response to investigation enquiries on 2 February 2017, the Council stated *'they had previously differentiated between the issues which they considered the main the responsibility of DOE to comment on and the residual issue of enforcement which Council had authority for'*. The Council acknowledged there *'was a delay in responding to [the complainants] due to confusion regarding jurisdiction over complaints concerning actions or inactions by the Department prior to April 2015 and it apologised for this delay in responding to the original complaint'*. The Council accepted *'it had failed to respond to the complaint within an acceptable timescale. As a result, the importance of adhering to timescales set out in the Council's complaints handling policy has been highlighted to staff'*.

135. The complainants sought the assistance of their MLA in relation to this complaint and a comprehensive report was submitted to the Council on their behalf. The Council replied to Mr Kieran McCarthy MLA on 8 February 2016. The Council wrote *'they unreservedly apologised'* for the delay in responding and stated there was *'some confusion initially in that planning officers believed that this was not a matter for the Council, as these issues concerned planning applications determined by the Department prior to April 2015 and not Council. As such, these complaints were 'matters for the Department alone. This should have been communicated to [the complainants] at the time'*. The Council further stated they *'couldn't comment on issues raised except the issue of planning enforcement'....the enforcement issues will be investigated by our planning enforcement team who will advise [the complainants] directly of the outcome of those enquires.....in relation to your*

*substantive complaint I must advise that the key issues raised in your constituent's complaint are beyond Council's jurisdiction and for DOE alone to comment on. Council will ensure the issue of potential breaches of planning control are investigated and dealt with in a timely and effective manner'.*

## **Analysis and Findings**

136. I note the complainants submitted their complaint to the Council through the auspices of Mr McCarthy to the Council on 10 July 2015. Mr McCarthy contacted the Council on 12 October 2015 and again on 11 January 2016 requesting a response. However, the Council failed to respond to Mr McCarthy until 8 February 2016. This was almost seven months after the complaint was submitted.

I have reviewed the Council's complaints process and procedure which outlines that stage one and two complaints will be responded to within three and 15 working days.

137. I have not been presented with any evidence that indicates stage one or stage two of the complaints procedure were initiated by the Council. Furthermore, stage three (final stage) of its complaints process aims to provide responses from the Chief Executive's office within 15 days of the receipt of original complaint, however I established it took approximately seven months for the Council to respond to Mr McCarthy regarding the complaint. The response time did not meet the target of 15 working days. I consider these delays to be unacceptable and the council's responses to the complaint are insufficient. The Council was seemingly unaware of its responsibility under the transfer of planning functions, I am critical that the council failed to adhere to its own Complaints, Comment and Compliments policy, as neither stage one or two of the complaints procedure was initiated. This failing contributed to a significant delay in stage three of the complaints procedure commencing. The second principle of Good Complaints Handling, 'Being customer focused' requires public bodies to avoid unnecessary delays and keep the complainant regularly informed about progress and the reasons for any delays'. I find this standard was not met in this case. I consider this failing to constitute maladministration. **I therefore uphold this element of the complaint.**

138. I note that the Council has apologised to Mr McCarthy for the delay in

responding to the complaint. However I note the Council stated in its response to my enquiries that it considered complaints regarding planning applications that had been determined by the Department were a matter for the Department to address. This was cited as the reason for significant delays. However, I note that on 1 April 2015 the majority of planning functions transferred from central government (the former Department of the Environment) to District Councils in Northern Ireland as set out in the Planning Act (NI) 2011. I consider the Council's assertion to be surprising and to be contrary to the provisions and intent of Schedule 8 paragraph 3 of the Local Government Act (Northern Ireland) 2014. I am critical of the Council's approach to complaints. Particularly its failure to be aware of its responsibility for investigating this complaint, whose concerns were raised on 10 July 2015. This is almost three months after local government reform and the long awaited transfer of planning powers.

139. The first Principle of Good Administration, 'Getting it right' requires a public body to act in accordance with its policy and guidance, and with regard to the rights of those concerned. The second Principle of Good Administration, Being Customer Focused requires a public body to keep to its commitments, including any published service standards, and by dealing with people helpfully and promptly. I am satisfied that the time taken by the Council to respond to the complaint demonstrates that it failed to meet the requirements of the first and second Principles of Good Administration. I find the Council's failure in this regard to constitute maladministration.

140. I note the Council informed Mr Kieran McCarthy MLA on 8 February 2016 '*in relation to your substantive complaint I must advise that the key issues raised in your constituents complaint are beyond Council's jurisdiction and for DOE alone to comment on*'. The Council was, in my view, responsible following the transfer of planning functions to it in April 2015. I refer again to the second Principle of Good Administration, 'Being customer focused', which requires a public body to deal with people helpfully, promptly and sensitively. The third principle requires a public body to 'Be open and accountable', by being open and clear about policies and procedures and ensuring that information and any advice provided is clear accurate

and complete. This failing is also contrary to the first principle of Good Complaints Handling, 'getting it right', which requires public bodies to have 'clear governance arrangements which set out roles and responsibilities, and ensure lessons are learnt from complaints'. I am satisfied that the incorrect information provided by the Council to Mr McCarthy on 8 February 2016 demonstrates that the Council failed to meet the requirements of the second and third Principles of Good Administration and the first Principle of Good Complaints Handling. I find the Council's failure in this regard to constitute maladministration which caused the complainants distress, upset and frustration.

## CONCLUSION

141. The complainants complained about the actions of the former DOE Planning Service and Newry, Mourne and Down Council.

142. I have investigated the complaint and have found maladministration in relation to the following matters:

- Failure to consider planning policy appropriately in determining the 2013 application
- Failure to adhere to the Council's Complaints, Comment and Compliments Policy
- Delay in complaint handling

143. Considering the failure to appropriately consider and apply planning policy I have no faith in the decision taken by the Council in their determination of the 2013 application.

144. I am satisfied that the maladministration I identified caused the complainants to experience the injustice of uncertainty, frustration and time and trouble in pursuing their complaint to my office.

145. I have not found maladministration in relation to the following issues of the

complaint:

- (iii) Whether the 2010 planning application was processed appropriately; and
- (iv) Whether the Council took appropriate enforcement action regarding the developer's breaches of planning control of the 2010 application.

## **Recommendations**

146. The Council should issue the complainants with an apology for the failings which I have identified in this report, within one month of the date of my final report. This apology should be in accordance with NIPSO Guidance on Making an Apology (Appendix 3).

147. I also recommend that Council make a payment of £1,000 by way of solatium for redress in respect of the injustice suffered by the complainants, within one month of the date of my final report.

148. The Newry, Mourne and Down District Council accepted my findings and recommendations.

150. I note that in response to the draft report, the complainants reiterated the injustices they had experienced throughout this experience. I further note they wished to thank the Ombudsman for conducting her investigation.

*Marie Anderson*

**MARIE ANDERSON**  
Ombudsman

**July 2019**

## 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.

## GUIDANCE ON ISSUING AN APOLOGY

### Introduction

When my office investigates a complaint and finds that a problem has not been resolved I often recommend that the organisation offers an apology. In these circumstances the complainant has very often been waiting a considerable period of time for someone to provide a full explanation as to what went wrong and to apologise for the mistakes that have been made.

This guidance note sets out what an apology is and what you need to do for an apology to be meaningful.

### What is an apology?

An apology means accepting that you have done wrong and accepting responsibility for it. It can be defined as a 'regretful acknowledgement of an offence or failure'. Mistakes can be made by one member of staff, a whole team or there may be systemic failures within an organisation. When things do go wrong most people who have had a bad experience may want no more than to be listened to, understood, respected and, if appropriate, given an explanation and an apology.

### Why apologise?

In many cases an apology and explanation may be a sufficient and appropriate response to a complaint. The value of this approach should not be underestimated. A prompt acknowledgement and apology, where appropriate, can often prevent the complaint escalating. It can help restore dignity and trust and can be the first step in putting things right.

### What are the implications of an apology?

Although there is no legislation in this area of law which applies specifically to Northern Ireland, the Compensation Act 2006 governing England and Wales states that 'an apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or statutory duty.' The timely provision of a full apology may in fact reduce the chances of legal action being taken against public bodies.

An apology should not be regarded as a sign of organisational weakness and can benefit the public authority as well as the complainant by showing a willingness to:

- Acknowledge when things have gone wrong
- Accept responsibility
- Learn from the maladministration or poor service
- Put things right

### What is a meaningful apology?

The most appropriate form and method of communicating an apology will depend on the circumstances of a particular case. To make your apology meaningful you should do the following:

- Accept you have done wrong. You should include identifying the failure along with a description of the relevant action or omission to which the apology applies. This should include the failings that I have identified in my investigation that warrant an apology. Your description must be specific to show that you understand the effect your act or omission has had on the complainant. It must also acknowledge that the affected person has suffered embarrassment, hurt, anxiety, pain, damage or loss.
- Accept responsibility for the failure and the harm done.
- Clearly explain why the failure happened and include that the failure was not intentional or personal. If there is no explanation however one should not be offered. Care should be taken to provide explanation rather than excuses.
- Demonstrate that you are sincerely sorry. An apology should be an expression of sorrow or at the very least an expression of regret. The nature of the harm done will determine whether the expression of regret should be made in person as well as being reinforced in writing.
- Assure the complainant that you will not repeat the failure. This may include a statement of the steps that have been taken or will be taken to address the complaint, and, if possible, to prevent a reoccurrence of the problem.
- Provide the complainant with a statement of the action taken or specific steps proposed to address the grievance or problem, by mitigating the harm or offering restitution or compensation.

### **How should I make an apology?**

Each complaint is unique so your apology will need to be based on the individual circumstances. It is important that when you are making an apology, you understand how and why the person making the complaint believes they were wronged and what they want in order to put things right. An apology therefore should express regret and sympathy as well as acknowledgment of fault, shortcoming or failing. Failing to acknowledge the complainant's whole experience is only a partial apology and much less powerful than a complete apology.

There is no 'one size fits all' apology but I would include the following points as reflecting some general good practice:

1. The timing of an apology is very important. Once you establish that you have done wrong, apologise. If you delay you may lose your opportunity to apologise.
2. The language you use should be clear, plain and direct.

3. Your apology should not be conditional by qualifying the apology by saying for example: 'I apologise if you feel that the service provided to you was not acceptable' or 'if mistakes have been made, I apologise'.
4. To make an apology meaningful do not distance yourself from the apology. Generalised apologies such as 'I am sorry for what occurred' or 'mistakes were made' do not sound natural or sincere. It is much better to accept responsibility and say 'It was my fault'.
5. Avoid enforced apologies such as 'I have received the Investigation report from the Commissioner and am therefore carrying out his recommendations by apologising to you for the shortcomings identified in his report'.
6. It is also very important to apologise to the right person or the right people.

### **Who should apologise?**

If, in my Investigation Report I have made a recommendation that an apology should be provided to the complainant, then I would expect to see the Chief Executive or Director or Head of Department of the Body involved making the apology.

### **Who should receive the apology?**

The apology should be sent directly to the complainant who is named in the Investigation Report. I will not, as a matter of course, review apologies prior to them being issued. However in order that I am able to monitor compliance with the recommendations that I have made, I would expect to receive a copy of the apology letter within the timeframe stated in my report.

### **The benefits to organisations of apologising**

It is important to remember that an apology is not a sign of weakness or an invitation to be sued. It can be a sign of confidence and competence and it can demonstrate that you are willing to learn when something has gone wrong. It can also show that you are committed to putting things right. To apologise is good practice and is an important part of effectively managing complaints where an organisation has failed.



Marie Anderson  
**Ombudsman**

## Appendix 9

### Abbreviations

DC	Development Control
DCAN	Development Control Advice Note
DCG	Development Control Guidance
DDC	Down District Council
DCO	Development Control Officer
DOE	Department of Environment
DPM	Divisional Planning Manager
FRA	Flood Risk Assessment
NMDDC	Newry Mourne Down District Council
NIEA	Northern Ireland Environment Agency
NITB	Northern Ireland Tourist Board
PAC	Planning Appeals Commission
PPS	Planning Policy Statement