

# Investigation Report

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

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**NIPSO Reference: 18321**

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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, and 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.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

## **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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## SUMMARY

I received a complaint regarding the handling of a planning application, LA07/2016/\*\*\*\*\*' by the Newry, Mourne and Down District Council (the Council).

I accepted the following issues of complaint for investigation:

- Was it reasonable for the Chief Planning Officer to introduce new information at the Planning Committee meeting on 19 July 2017 regarding application LA07/2016/\*\*\*\*\*'
- Whether the Council's handling of the complaint was in accordance with its policy and appropriate standards.

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

- (i) The failure of the Chief Planning Officer to create and maintain adequate records of his preparatory work for the Committee meeting on 19 July 2017; and
- (ii) The Council's failure to provide reasons for the Committee's decision regarding the complainant's application (deferral).

I am satisfied that the maladministration identified resulted in the injustice of uncertainty and loss of opportunity for the complainant.

In addition, I also found maladministration in relation to the following matters that caused the complainant to experience the injustice of frustration and uncertainty:

- (i) Excessive delays when responding to all stages of the complaint;
- (ii) The Council's failure to act in accordance with its policy by not notifying the complainant of the delays or providing him with a revised timescale for its responses;
- (iii) The Council's decision to forward the complaint to the Chief Planning Officer at stage one of the Complaints Procedure for him to respond to;
- (iv) The Council's failure to properly consider the complainant's concerns regarding the Chief Planning Officer's involvement with his complaint; and

- (v) The failure of the complaints investigators to meet with the complainant during the investigation of his complaint.

I did not find maladministration in relation to the following matter:

- (i) The Chief Planning Officer's actions in bringing new information to the Committee meeting on 19 July 2017.

I noted that at the time of writing this report, the complainant's planning application remained '*under consideration*'. I suggested that the Council ought to take immediate steps to address the issues causing this excessive delay so that it may provide the complainant with an outcome to his application.

## THE COMPLAINT

1. The complaint is in relation to the handling of the complainant's planning application by the Council. The complainant applied to the Council for planning permission for an agricultural shed in December 2016. The Council informed the complainant by letter, dated 2 June 2017, that his proposal was considered to be '*contrary to planning policy*' as the proposed shed was not '*sited beside the existing buildings on the holding*'. The Council Officer's recommendation to the Council's Planning Committee, and the reasons for it, were detailed in the professional planning report<sup>1</sup> (PPR). Together with the reasons for its recommendation, the PPR also stated that '*the proposal would have no adverse impact on the Area of Outstanding Natural Beauty (AONB)*<sup>2</sup>'.
2. The complainant's application was discussed at a Planning Committee meeting held on 19 July 2017, which the complainant attended. The complainant said that at this meeting, the Chief Planning Officer, claimed that the proposed site was not '*in keeping*' with the AONB. The complainant advised that this was the reason why the Council recommended refusing his application. He complained that this was new information brought by the Chief Planning Officer to the planning Committee not supported by previous documentation. Therefore this decision was not in accordance with Council's policy. The complainant queried if the Chief Planning Officer conducted a site visit and complained that if he did, he did not take notes of the visit.
3. The complainant also complained about the Council's investigation of his complaint. He complained that each stage of the complaints process was subject to delays. Further, that he had limited contact with the complaints investigators. The complainant also raised concerns about the Chief Planning Officer's involvement in stage one of his complaint.

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<sup>1</sup> The case officer's report to the planning Committee

<sup>2</sup> An area of outstanding natural beauty is one identified by government bodies as requiring protection to conserve and enhance its natural beauty

## Issues of complaint

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

**Issue 1: Was it reasonable for the Chief Planning Officer to introduce new information at the Planning Committee meeting on 19 July 2017 regarding application LA07/2016/1612/F?**

**Issue 2: Whether the Council's investigation of the complaint was in accordance with its policy and appropriate standards.**

## 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 by the complainant. This documentation included information relating to the Council's handling of the complaint. The Investigating Officer also interviewed the Chief Planning Officer in relation to the complaint.

### Relevant Standards

6. 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.
7. The general standards are the Ombudsman's Principles<sup>3</sup>:
- The Principles of Good Administration
  - The Principles of Good Complaints Handling
  - The Public Services Ombudsmen Principles for Remedy
8. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of the Council and the actions of the individuals whose actions are the subject of this

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<sup>3</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

complaint.

9. The specific standards relevant to this complaint are:
  - (i) The Newry, Mourne and Down District Council's Planning Committee Operating Protocol, revised February 2017 (the Protocol);
  - (ii) Planning Policy Statement Two: Natural Heritage (PPS2);
  - (iii) Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21);
  - (iv) The Department of the Environment's Strategic Planning Policy Statement for Northern Ireland (SPPS);
  - (v) Newry, Mourne and Down District Council's Complaints, Comments and Compliments, not dated (the Complaints Procedure); and
  - (vi) Newry, Mourne and Down District Council's Complaints Comment and Compliment Policy, 2014 (the Complaints Policy).
  
10. In investigating a complaint of maladministration in the planning process, my role is concerned primarily with an examination of the administrative actions of the Council. I am unable to challenge the merits of a decision by a planning authority unless that decision was attended by maladministration.
  
11. 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.
  
12. A copy of the draft report was shared with the complainant and the Council for comment on factual accuracy and the reasonableness of the findings and recommendations.

## **INVESTIGATION**

### **Issue 1: Was it reasonable for the Chief Planning Officer to introduce new**

**information at the Planning Committee meeting on 19 July 2017 regarding application LA07/2016/\*\*\*\*\*'**

13. The complainant said that the Chief Planning Officer introduced new information relating to his planning application during the planning Committee meeting held on 19 July 2017. He explained that the Council informed him by letter on 2 June 2017 that it was recommending refusal of his planning application. The letter stated that its reason for this recommendation was that the proposed site was not situated beside existing buildings.
14. The complainant explained that the Planning Officer who conducted the initial site visit prepared her Professional Planning Report (PPR) prior to the Planning Committee meeting. He advised that in that report, the planning officer stated that there was '*no adverse impact on AONB*'. The complainant explained that he prepared additional evidence based on the Council's reasons for its recommendation (that the proposed site was not situated beside existing buildings); and also based on the information contained within the PPR.
15. The complainant explained that he attended the Planning Committee meeting on 19 July 2017. He further explained that during the meeting, the Chief Planning Officer informed the Committee that the complainant's application was '*being rejected on the grounds of an infringement of an Area of Outstanding Natural Beauty*'. The complainant advised that this point had not been raised previously, and also that the Planning Officer's PPR stated that there was '*no adverse impact on AONB*'.
16. The complainant queried if the Chief Planning Officer conducted a site visit. He complained that if he did, he did not record notes relating to his decision to refer to the impact on AONB.
17. Following discussion, the Planning Committee agreed to defer making a decision on the complainant's planning application and delegate the authority to make a decision on the application to a Council Officer. This was to allow Council Officers to visit the complainant's property to agree an alternative suitable site for the proposed farm building. The complainant's planning

application remains '*under consideration*' since July 2017.

18. The following guidance was considered as part of investigation enquiries. I have highlighted the relevant extracts as follows:

- (i) The Protocol '*developed for use by the Planning Committee ("the Committee")...the key aims of the protocol are to ensure that the Committee makes decisions in a sound, lawful and transparent way and in a timely and efficient manner*'.
  
- (ii) I refer to paragraph 16 of this Protocol, which states that '*the Committee will discuss each application that has been presented, for a maximum of 20 minutes (with extension at the Chair's discretion), before taking a vote on one of the following options:*
  - a) Approve the application with conditions as recommended;*
  - b) Approve the application with amendments to the recommended conditions;*
  - c) Approve the application contrary to Officer recommendations;*
  - d) Refuse the application for the reasons recommended;*
  - e) Refuse the application with additional, fewer or amended reasons;*
  - f) Refuse the application contrary to Officer recommendations;*
  - g) Defer the application with a direction for additional information or clarification; or for a Members' site visit*'.
  
- (iii) I refer to paragraph 17, which states that '*the Committee can defer consideration of an application to a subsequent meeting for further information, further negotiations or a site visit. Deferrals have an adverse effect on processing times, and the applicant can lodge an appeal after a period of time if the Council has not made a decision*<sup>4</sup>. *The Committee will therefore generally only defer an application once. The Member proposing deferral must provide clear relevant planning related reasons as to why a deferral is necessary. If a Committee Member was not*

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<sup>4</sup> I note that the timeframe for submitting such an appeal is eight weeks.

*present for the initial discussion/debate in relation to a deferred application, or did not attend a site visit, he/she cannot participate in the discussion on, nor vote on that application when it is subsequently presented to Committee’.*

- (iv) In the section of the Protocol entitled, ‘*Decisions Contrary to Officer Recommendation*’, it states that ‘*the power to decide an application lies with the Committee and it is entitled to come to a decision contrary to Officers’ recommendations*’.

*‘The reasons for the decision contrary to the Officer’s recommendation must be formally recorded in the minutes and a copy placed on the planning application file/electronic record’.*

- (v) I refer to policy NH6 of PPS2. This planning policy requires ‘*development proposals in Areas of Outstanding Natural Beauty (AONB) to be sensitive to the distinctive special character of the area and the quality of their landscape, heritage and wildlife*’.

In relation to granting of planning permission, the policy states, ‘*planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and all the following criteria are met:*

- a) the siting and scale of the proposal is sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality; and*
- b) it respects or conserves features (including buildings and other man-made features) of importance to the character, appearance or heritage of the landscape; and*
- c) the proposal respects:*
  - local architectural styles and patterns;*
  - traditional boundary details, by retaining features such as hedges, walls, trees and gates; and*

- *local materials, design and colour*’.

(vi) I refer to policy CTY12 of PPS21, which relates to agricultural and forestry development. This policy states that *‘in cases where a new building is proposed applicants will also need to provide sufficient information to confirm all of the following:*

- *there are no suitable existing buildings on the holding or enterprise that can be used;*
- *the design and materials to be used are sympathetic to the locality and adjacent buildings; and*
- *the proposal is sited beside existing farm or forestry buildings.*

*Exceptionally, consideration may be given to an alternative site away from existing farm or forestry buildings, provided there are no other sites available at another group of buildings on the holding, and where:*

- *it is essential for the efficient functioning of the business; or*
- *there are demonstrable health and safety reasons*’.

19. I have considered the Planning Officer’s PPR for the complainant’s planning application. This report was written by the Planning Officer and countersigned by the Senior Planning Officer. The PPR states *‘there are former outbuildings within the immediate vicinity of the dwelling that are also derelict. There is no history associated with the property and it does not appear to be capable of being used as an agricultural building due to size and the current state of the building and structures within the immediate vicinity. However it must be noted that this would constitute existing buildings on the holding even if they are not suitable for use to suit applicants current [sic] needs for storage of mainly animal feed and machinery. The Strategic Planning Policy Statement for Northern Ireland (SPSS) requires new agricultural buildings to be sited beside existing farm or forestry building on the holding. This reflects policy CTY12 of PPS21’*. The report states that the complainant’s planning proposal is *‘therefore contrary to the SPSS and policy CTY12 of PPS21’*.

20. The PPR also states that *'the site proposed is located within Slieve Croob and is an Area of Outstanding Natural Beauty. The site is set back from the Slievenaboley Road and also benefits from a lower ground level than the public road with a backdrop beyond'*. The PPR states that *'it must be noted that the area is associated with agricultural use and a dispersed rural community of detached dwellings and agricultural buildings therefore the proposal would not be out of keeping with the character of the area. The proposal would not have an adverse impact on the AONB'*.
21. The planning officer recommended, *'refusal – the proposal is contrary to the SPPS and policy CTY12 of PPS21'*. It further states, *'refusal reasons as recommended by planning officer and can be subject to change; The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY12 of Planning Policy Statement 21, Sustainable Development in the Countryside in that it has not been demonstrated that:*
- *The proposal is sited beside existing farm and forestry buildings;*
  - *Health and safety reasons exist to justify an alternative site away from the existing farm buildings;*
  - *The alternative site away is essential for the efficient functioning of the business'*.
22. I have carefully considered the minutes of the Council's Planning Committee meeting held on 19 July 2017. In relation to the complainant's application, the minutes state that the *'conclusion and recommendation from planning official'* was *'refusal'*. The minutes also state that the complainant *'presented in support of his application'*. In relation to the outcome of the application, the minutes state that *'on the proposal of Councillor (A) seconded by Councillor (B) it was agreed to defer planning application LA07/2016/\*\*\*\*, to allow further discussion between planning officers and the applicant to identify a suitable alternative site. Planning department be delegated authority to issue decision thereafter'*.
23. I have also considered the handwritten contemporaneous notes of the 19 July

Committee meeting (as recorded by a Council Officer). In addition to the typed minutes, the contemporaneous notes state that *'derelict buildings represented an opportunity to cluster with those and more acceptable location than one proposed. It gave better level of screening and well integrated into landscape'*. The notes further record that *'it was agreed to defer application and planners to discuss further with applicant to identify another suitable site. Delegate decision to planners'*.

24. In its response to investigation enquiries, the Council referred to its responses to the complainant set out in correspondence sent as part of its complaints process. The Council explained that the Chief Planning Officer *'visited the site in advance of the Committee meeting'*. It further explained that *'arising from his preparation for the Committee meeting, the Chief Planning Officer [ ] was not content with some aspects of the planning report, but in particular the suggestion that the proposed shed would not have an adverse impact on the Area of Outstanding Natural Beauty (AONB)'*. The Council also explained that *'the Planning Department was of the opinion that the proposal to site the shed in your preferred location would adversely affect an Area of Outstanding Natural Beauty. This was therefore a material consideration'*.
25. In relation to information provided by the Chief Planning Officer during the Committee meeting, the Council explained that *'the presentation given by the Chief Planning Officer at the meeting was influenced by the preparatory work that he had undertaken. The purpose of the presentation is to introduce the subject matter and provide a summary of the main issues. The time available does not allow for a reprise of all the written material already provided to Committee members. He advised the Committee that while the proposal was not considered acceptable in planning terms, it was his view that an acceptable alternative siting for the building could be identified'*.
26. In relation to the Committee's decision on the complainant's application, the Council explained that *'the recommendation to the Committee was that planning permission should be refused. However there was the potential to identify an alternative/compromise site. Following discussion the Committee*

*was content that some effort should be made to find an alternative site'.*

27. As part of the investigation, the Investigating Officer interviewed the Chief Planning Officer to help understand what actually did happen and, if possible, why the events unfolded as they did. The Chief Planning Officer explained that he visited the proposed site prior to the Committee meeting on 19 July 2017. When questioned as to the date he visited the site, the Chief Planning Officer explained that it was before the Committee meeting and that it occurred over the period of a couple of days. He explained that the purpose of the visits was to familiarise himself with the site. In relation to retaining a record of his observations while visiting the site, the Chief Planning Officer explained that he did not record notes. He further explained that he does not normally take notes unless there is something particular to note.
28. In relation to the concern regarding the AONB, the Chief Planning Officer explained that the Planning Officer assigned to the complainant's application stated on the PPR that there was '*no adverse impact on the AONB*'. The Chief Planning Officer disagreed with this view. He explained that any application within a development of AONB had a potential impact on the AONB. However, '*a suitable site within the AONB may be acceptable*'.
29. The Chief Planning Officer was questioned by the Investigating Officer as to whether the recommendation to refuse the complainant's application was because of impact on the AONB. He explained that the engagement with the Committee should be considered in its entirety. The discussion at Committee about the AONB was only part of the overall discussion. The Chief Planning Officer added that the recommendation was based on linking and clustering with existing buildings and that the AONB was not the determining consideration. He explained that the concern related to policy. The Chief Planning Officer further explained that when the issue of AONB was discussed, he indicated to the Committee that there was a concern in this regard, and that this was not a fresh submission to the Committee. He added that his concern regarding the AONB issue was not recorded on file prior to the Planning Committee meeting as it arose as part of his preparation for the meeting. The

Chief Planning Officer disagreed that his comments relating to AONB was '*late information*'.

### **Analysis and Findings**

30. I note that the PPR for the complainant's planning application stated that the complainant's proposed site had '*no adverse impact on the AONB*'. I consider that this was the Planning Officer's professional view at this stage of the processing of the planning application.
31. I note that during the Committee meeting on 19 July 2017, the Chief Planning Officer had a concern regarding the Planning Officer's statement on the PPR, as it was his view that the proposed building did have an impact on the AONB. I further note that this formed part of the discussion with the complainant during the Committee meeting. I consider that by providing his comments regarding the impact on the AONB, the Chief Planning Officer provided his legitimate views. I consider that in his role as Chief Planning Officer, he was entitled to provide his professional opinion on the view expressed by the Planning Officer in the PPR, and that he did so during the meeting.
32. I note that the Council Officer's recommendation for the complainant's proposal was refusal. I am satisfied that the reason for this recommendation was that the proposed site was not in accordance with CTY12 of PPS21 (as stated in the PPR).
33. I note that the outcome from the Committee meeting regarding the complainant's planning application was '*deferral*'. I also consider that by deferring this decision, there remains a further opportunity to resolve the issues relating to the complainant's application before a decision on the application is made. I am satisfied that the decision for deferral was made in accordance with Paragraphs 16(g) and 17 of the Protocol. I have found no evidence of maladministration in this part of the planning application process. **I therefore do not uphold this element of the complaint.**
34. I shared the draft report with the complainant for his review and comment. In his response the complainant stated that there is '*reasonable doubt*' that the

Chief Planning Officer made a visit to the proposed site. I note that the Chief Planning Officer stated that he visited the site prior to the Committee meeting. This investigation has established that the Chief Planning Officer was unable to provide any evidence of his visit, nor was he able to provide the exact date that he attended the site. Therefore, I am unable to determine whether or not the Chief Planning Officer visited the site. However, it is not necessary for me to do so.

35. In its response to the complaint, the Council explained that the Chief Planning Officer presentation at the Committee meeting was *'influenced by the preparatory work that he had undertaken'*. I have found no evidence of the Chief Planning Officer preparatory work. I consider that the absence of this preparatory work is contrary to the Third Principle of Good Administration. This principle requires bodies to keep *'proper and appropriate records'*. The maintenance of full and contemporaneous records is important for good decision making, explaining and evidencing decisions clearly for people, and enabling actions to be understood in the event that they are challenged. I find the Chief Planning Officer failure in these regards to constitute maladministration.
36. In addition, the Chief Planning Officer confirmed during his interview with the Investigating Officer that he does not create a record or keep notes of each site visit undertaken in preparation for Council Planning Committee meetings. I would ask the Council to ensure that the Chief Planning Officer and other Officers create and maintain appropriate records relating to their work to ensure maladministration of this nature is not systemic.
37. The contemporaneous handwritten notes and the typed minutes of the Planning Committee meeting do not refer to a discussion of the AONB issue. The minutes also do not record that the Chief Planning Officer could see the site from the road. However, it is not disputed that these issues were discussed during the Committee meeting.
38. In his response to the draft report, the complainant explained that *'a practical exercise carried [out] with a full scale model, at the proposed site, lends support*

*to the case that [the Chief Planning Officers] claim that the site was visible from the road has proven his claim to be incorrect*. I have already established in Paragraph 37 of this report that the minutes of the Committee meeting on 19 July 2017 do not reference the Chief Planning Officers claim. However, whether or not the site is visible from the road is not within the remit of this investigation. This investigation does not test whether or not the Chief Planning Officers view on the AONB issue is correct. It was to establish whether or not the Chief Planning Officers actions at the Committee meeting were appropriate and in accordance with protocol. Therefore, I have not made a finding on the complainant's allegation that the Chief Planning Officers claim that the site could be seen from the road was incorrect.

39. The Protocol requires that *'the Member proposing deferral'* to *'provide clear relevant planning related reasons as to why a deferral is necessary'*. The Protocol also states that the Committee will make *'decisions in a sound, lawful and transparent way'*. I do not consider that the contemporaneous notes of the meeting fully evidence the reasons for the Committee's decision. The minutes do not refer at all to the AONB issue. The recording of reasons is an important element of good administration. The absence of recorded reasons to support the Committee's decision is a failure to meet the Third Principle of Good Administration, which requires bodies to keep *'proper and appropriate records'* and give *'reasons for decisions'*. I find the Council's failure in this regard to constitute maladministration.
40. I consider the failure to record discussions and to provide reasons constitutes maladministration. I have considered whether these failings caused any injustice to the complainant as a consequence of the failure to make full records and to record the reasons for the decision to defer in this case. I am satisfied the absence of records and full reasons has caused the complainant the injustice of uncertainty in relation to his understanding of the Council's decision and the time and trouble in bringing his complaint to my Office. The outcome to the complainant's application has been deferred for further consideration. This provides an opportunity for the issues surrounding the complainant's

application to be resolved before a decision is taken on his application. I will consider an appropriate remedy for this injustice at the conclusion of this report.

41. In his response to this draft report, the complainant referred to the statement made by the Chief Planning Officer at the Committee meeting on 19 July 2017, which related to the adverse impact on the AONB. The complainant referred me to Paragraph 25 of the Protocol, which states that *'all information must be submitted a minimum of 5 working days in advance of the Committee Meeting to ensure that the issues raised can be fully processed and considered by officers prior to the Committee Meeting. Late information may therefore be disregarded or result in consideration of the application being deferred if officers have not had an opportunity to fully investigate and process said information'*. It was the complainant's view that by making this statement at the meeting, the Chief Planning Officer did not act in accordance with the Protocol.
42. I have carefully considered the complainant's comments alongside Paragraph 25 of the Protocol. I note that this paragraph is contained within the section of the Protocol entitled, 'Public Representations'. I consider that this paragraph relates to information provided by members of the public and/or their representatives. I am satisfied that the wording in this paragraph highlighted by the complainant does not apply to the Chief Planning Officer in his role as a Council official. Those Officers speaking at a Committee meeting cannot be constrained in what they say. The decision makers need to be able to explore any issue and those present can respond to those issues. The Chief Planning Officer, as a professional, is entitled to speak freely to express his views and options to the Committee who are the decision makers. Therefore, my consideration is that the Chief Planning Officer provided his legitimate view regarding the AONB issue and the PPR during the Committee meeting on 19 July 2017 remains unchanged.
43. After careful consideration of the additional comments made by the complainant, I corrected factual errors identified by him. I have not made any amendments to my findings and recommendations regarding this issue of complaint.

**Issue 2: Whether the Council's handling of the complaint was in accordance with its policy and appropriate standards.**

44. The complainant said that during the Council's complaints process he suffered significant delays. He further complained that he had limited contact with the investigator of stage two of his complaint. Furthermore, he had no contact with the investigator of the stage three complaint.
45. He further complained that the Chief Planning Officer ought not to have been involved at stage one of his complaint. That is because the Chief Planning Officer was previously involved in the complainant's planning application. The complainant explained that it was the Chief Planning Officer who introduced the AONB issue at the planning Committee meeting. This was a significant issue in the complaint to the Council.
46. The following guidance was considered as part of investigation enquiries. I have highlighted the relevant extracts as follows:
- (i) The Council's Complaints Procedure: this is detailed in a leaflet provided to members of the public who wish to raise a complaint, comment or compliment which states:
- 'Stage 1 Local Resolution – our aim is to resolve problems as promptly as possible. As a first step we would ask you to contact the member of staff you were dealing with. If it is not possible for you to talk to a member of staff or you prefer to contact us in a different way, please see the contact details in this leaflet. Whatever method you use to contact us, you can expect us 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;*
- Stage 2 Service Investigation – 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.*

*Stage 3 Corporate Review – if you are unhappy with the response you receive from the Director, write to the Chief Executive at the address below. You should normally expect to receive a full written response within 15 working days of your complaint being received’.*

- (ii) I have highlighted the relevant extracts from the Council’s Complaints Policy below:

*I refer to paragraph four, which states that the ‘policy applies to all Council employees and to employees and organisations who deliver services on behalf of the Council’. It further states that it ‘sets out how the Council manages and responds to complaints, comments and compliments. Wherever possible, we aim to resolve the issue at first point of contact. We also seek to manage and respond to customer feedback in a consistent and professional manner’.*

I refer to paragraph seven relating to the timescales for a response to a complaint:

<i>Stage 1 Initial contact response</i>	<i>5 working days</i>
<i>Stage 2 First review</i>	<i>15 working days</i>
<i>Stage 3 Corporate review</i>	<i>15 working days</i>

*The policy also states that ‘when a customer cannot be provided with a full response within the above timescales the customer will be notified and given a revised timescale for that reply’.*

47. As part of the investigation, I have examined the Council’s complaint correspondence. A chronology of the complaints process was prepared.
48. The complaint was submitted to the Council on 20 July 2017, addressed to the Chief Executive and the Chief Planning Officer. His email to the Council attaching his complaint also requested that it be *‘passed to the Council’s CEO and the Chief Planner’.*

49. In its email acknowledging the complaint, the Council stated that it *'has a formal complaints procedure and your correspondence has been forwarded for attention under that procedure'*. In response to this email, the complainant requested a copy of the Council's complaints procedure. This was forwarded to him on 21 July 2017.
50. The complaint was formally acknowledged by the Council on 24 July 2017 (by email from the Planning Department). The letter stated, *'thank you for your letter received 20 July 2017 to the Chief Planning Officer, [ ], regarding the above. In line with the complaints policy procedure, the issues you have raised with [sic] be fully investigated and a response will issue to you in due course'*.
51. The complainant responded to the acknowledgement by email on 24 July 2017. In his email, the complainant stated, *'as far as I'm concerned, my complaint is about [the Chief Planning Officer], your reference to him in the acknowledgement would almost suggest that he's been charged with investigating his own behavior, I trust this is not the case. While I expect he will be asked to make comment on his behavior, I trust he will not be the one investigating my points of concern. My letter was for the attention of the CEO and the chief planner, I expect if one of the two are key to my complaint, the other will be responsible for dealing with my issues'*.
52. The Council responded to the complainant on 25 July 2017. It stated, *'I note your concerns with who is dealing with the request. The issues and concerns you have raised will be dealt with as per our complaints process, which I am aware you have a copy of the complaint leaflet'*.
53. On 10 August 2017, the complainant forwarded an email to the planning department advising that the *'15<sup>th</sup> day threshold'* was now reached and queried if he would receive his response that day. The complainant's email was forwarded to the Chief Planning Officer on 11 August 2017. The Chief Planning Officer replied to the complainant the same day and stated, *'I regret that a response to your complaint will not issue today but we will endeavour to respond by Friday 18 August'*. In relation to the Council's complaints procedure, the Chief Planning Officer stated, *'we are at the stage of local*

*resolution (Stage 1). Local resolution requires that you engage with my department to seek to resolve the complaint. Given that your planning application remains undetermined, you and I will be meeting shortly I [sic] hope to seek to resolve that application. Therein lies a means to potentially address your complaint...should you have any concerns with the complaints procedure that I have described and with engaging in that manner, you should contact the Council's Customer Services Office'.*

54. The complainant responded to the Chief Planning Officer email on 11 August 2017. He stated, *'as the complaint is about your behavior and performance; I believe we are well beyond stage 1, and indeed your involvement with investigating my complaint, in face to face consultation. The significant amount of time taken to tell me what you've just told me demonstrated further your arrogance and failings. This is nothing more than time wasting. I will now detail my concerns...with the councils [sic] chief executive'*. The Chief Planning Officer responded on 11 August 2017 to advise the complainant that he *'noted the content'* of his email.
55. On 11 August 2017, an email was forwarded to the Director Regulatory and Technical Services, requesting that he contact the complainant regarding his complaint. The email stated, *'[The complainant] said this complaint was passed to [the Chief Planning Officer] to deal with as a stage 1 complaint..[the complainant] is not willing to meet with the person he is complaining about. He asked to speak to the [Chief Executive]. [The Chief Executive] would like you to call the complainant'*.
56. On 15 September 2017, the complainant contacted the planning department by email. He referred to his complaint and his understanding that it was escalated to stage two in mid-August. In his email, the complainant stated that he received a phone call from the Director Regulatory and Technical Services at that time but had not received anything further. NMDDC Officer responded to the complainant on the same day. He acknowledged receipt of the complainants email and stated that he would *'check with the [Director Regulatory and Technical Service] next week'* and advise the complainant of an update.

57. The Director Regulatory Technical Service responded to the complaint as part of stage two of the complaints procedure by letter dated 20 September 2017. This letter was sent by email to the complainant on 21 September 2017. In his letter, the Director Regulatory Technical Service stated, *'I note your belief that this complaint cannot be resolved through Stage 1 of the Council Complaint Procedure. In such circumstances, I am content to bypass Stage 1 and address your complaint by way of Stage 2'*.
58. The complainant requested to move to stage three of the Complaints Procedure on 28 September 2017. In his email, the complainant stated that *'in order to take my complaint forward I request that a meeting be arranged with the CEO'*. The complainant's correspondence was acknowledged by the Council on 29 September 2017. The complainant also provided the Council with a detailed response to the Director Regulatory Technical Service's letter on 10 October 2017.
59. The complainant emailed the Council on 24 October 2017. In his email, the complainant stated that he was *'yet to be contacted by the stage 3 investigator'*. He added that he did not *'know how long this stage would take, nor have I been asked to contribute to the process, at minimum I would have expected to have been invited to meet with senior council officials regarding my concerns'*. The complainant followed this up with a further email to the Chief Executive, sent on 14 November 2017. He stated that stage three of the process was *'now at the 33<sup>rd</sup> working day, with neither resolution, consultation or explanation'*. The complainant added that *'this is far from acceptable'* and informed the Chief Executive that if a response to his complaint was not received by 15 November 2017, his complaint *'will move to the Ombudsman'*.
60. The Chief Executive, responded to the complainant, under stage three of the complaints procedure, in a letter dated 15 November 2017. In his letter, the Chief Executive stated, *'I am aware there has been a considerable delay in responding to your complaint. I would apologise unreservedly for this failure to meet the deadlines set out in Council's complaint policy'*.

61. In response to investigation enquiries, the Council explained that the complainant had exhausted its complaints procedure with its final Stage 3 response having issued on 15 November 2017. The Council further explained that details of its investigation of the complaint was included in the complaints file provided to the Investigating Officer by the Council.

### **Analysis and Findings**

62. I note that the Council acknowledged the complaint on the same day that it was submitted (20 July 2017). It was also formally acknowledged on 24 July 2017. I consider that both of these acknowledgements met the target response time as stipulated in the Complaints Procedure (three working days).
63. In relation to receiving a response under stage one of the complaints procedure, I note that the complainant contacted the Council on 10 August 2017. In his correspondence, the complainant outlined that the '*15<sup>th</sup> day threshold*' had been reached, and he had not yet had a response. I consider that the complainant assumed that his complaint had moved to stage two. He referred to the target response time associated with this stage of the Complaints Procedure (15 working days).
64. I note that the Chief Planning Officer responded to the complainant the following day clarifying that the complaint was at stage one of the Complaints Procedure. The Chief Planning Officer further advised that it was unlikely the complainant would receive a response until the following week, 18 August 2017.
65. I note that the Chief Planning Officer correspondence was sent to the complainant 16 working days following submission of his complaint. I further note that the expectation set by the Chief Planning Officer for his formal response would have been 21 working days following submission of the complaint. I note that prior to this date, neither the Chief Planning Officer nor any other Council employee notified the complainant of the delay. He was not provided with a revised timescale for the response. I further note that in his correspondence, the Chief Planning Officer did not provide an apology. Neither

did he provide an explanation for this excessive delay. Although the complainant did not receive a formal response under stage one, I consider that by the time the Chief Planning Officer corresponded with the complainant, the Council's response was outside the timescale in which it was required to provide its response (five working days). I have been unable to establish an explanation for this delay. This is not a complex case and the complainant, with other members of the public who complain, are entitled to a response within the stated timescales. It is also clear that the Chief Planning Officer was confused as to the separation between the complainant's ongoing planning application and his complaint.

66. The complainant proceeded with his complaint to stage two of the Council's Complaints Procedure on 11 August 2017. I note that the complainant contacted the Council on 15 September 2017 to request information relating to his complaint. I further note that NMDDC Officer responded to the complainant advising that he would '*check with [the Director Regulatory and Technical Services] next week*' and advise him of an update on the progress of his complaint.
67. I note that the Director Regulatory and Technical Services provided his response to the complainant 29 working days following submission of his stage two complaint (in an email sent on 21 September 2017). I further note that prior to this date, neither the Director Regulatory and Technical Services nor any other Council employee notified the complainant of the delay. Neither was he given a revised timescale for the response. The Director Regulatory and Technical Services response did not include an apology or an explanation for this excessive delay. I am satisfied that the Council's response time did not meet the target of 15 working days as stipulated in its complaints procedure (stage two). I have been unable to establish an explanation for the delay.
68. The complainant proceeded with his complaint to stage three of the Council's Complaints Procedure on 28 September 2019. I note that the complainant provided the Council with further details of his complaint on 10 October 2017. I further note that the complainant contacted the Council again on 24 October

and 14 November 2017 regarding the delay in its response. There is no evidence provided by the Council that it responded to the complainant on either of these occasions.

69. The Chief Executive responded to the complainant's stage three complaint on 15 November 2017. I note that the response time was 34 working days from when the complainant submitted his stage three complaint, and 27 working days following his submission of further information. I further note that prior to this date, the Chief Planning Officer nor any other Council employee notified the complainant of the delay. He was not given a revised timescale for the Council's response. This response time did not meet the target of 15 working days. I note that in his response, the Chief Executive apologised for the '*considerable delay*' but did not provide an explanation as to why this had occurred. I have been unable to establish an explanation for this excessive delay.
70. The delays experienced by the complainant at all stages of the Complaints Procedure were unacceptable. These delays are out with the Council's Complaints Procedure and Complaints Policy. The First Principle of Good Administration, '*getting it right*', requires public bodies 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 public bodies 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 to respond to the complaint demonstrates that the Council failed to meet the requirements of the First and Second Principles of Good Administration. I find the Council's failure in this regard of concern and I am satisfied that it constitutes maladministration.
71. The Council failed to notify the complainant of the delays and to provide him with revised timescales for the response. In this respect, I consider that the Council did not act in accordance with its Complaints Policy. The First Principle of Good Administration, '*getting it right*', requires public bodies to act in accordance with its policy and guidance, and with regard to the rights of those

concerned. I am satisfied that by not providing the complainant with this information, it demonstrates that the Council failed to meet the requirements of the First Principle of Good Administration. I find the Council's failure in this regard to constitute maladministration.

72. The complainant further complained that he had limited or no contact with the investigators of his complaint. The complainant advised that he spoke with the Director Regulatory and Technical Services regarding stage two of his complaint by telephone on one occasion. He further advised that he did not have any contact with the Chief Executive regarding stage three of his complaint. The Second Principle of Good Complaint Handling, '*being customer focused*', requires bodies to listen to deal with complainants '*sensitively, bearing in mind their individual circumstances*'. It also requires bodies to listen to complainants '*to understand the complaint and the outcome they are seeking*'. I consider that in the complainant's case, there were contentious issues surrounding his complaint, including his concerns regarding the Chief Planning Officer's conduct and subsequent involvement in his complaint. I therefore consider that the investigators ought to have met with the complainant to gain a full understanding of his complaint. This would have ensured that a full investigation of his concerns was undertaken. I am satisfied that by not meeting with the complainant as part of the investigation process demonstrates that the Council failed to meet the requirements of the Second Principle of Good Complaint Handling. I find the Council's failure in this regard to constitute maladministration.

73. The complainant further complained regarding the Chief Planning Officer's involvement in stage one of the complaints procedure. I note that at the first stage of the complaints procedure, the complainant is asked to '*contact the member of staff you were dealing with*'. I further note that the complainant addressed his complaint to the Chief Executive and to the Chief Planner, who in this case was the Chief Planning Officer. I consider that the Council's decision to forward the complaint to the Chief Planning Officer was in accordance with its complaints procedure. However, I do not consider it appropriate, in this instance, for an Officer who was so central to the issues

raised by the complainant to handle the complaint. I consider that this decision did not meet the requirements of the Fourth Principle of Good Complaint Handling, 'acting fairly and proportionately'. This requires bodies to ensure *'that complaints are reviewed by someone not involved in the events leading to the complaint'*. I find the Council's failure in this regard to constitute maladministration.

74. I note that the complainant, having been made aware that his complaint was forwarded to the Chief Planning Officer, informed the Council of his concerns. I further note that his concerns were acknowledged by the Council. However, the Chief Planning Officer continued to be involved in the complaint at stage one of the procedure. I consider that the Council did not provide any evidence that it properly considered the complainant's request, sent on 24 July 2017, regarding the Chief Planning Officer's involvement. I further consider that once it was aware of the complainant's concerns, the Council ought to have reviewed the circumstances of this complaint and respected the complainant's express wish. This resulted in the Chief Planning Officer contacting the complainant regarding his stage one complaint despite the complainant's request. The Second Principle of Good Administration, *'being customer focused'*, requires public bodies to deal with people helpfully, promptly and sensitively, bearing in mind their individual circumstances. I am satisfied that by not considering and acting on the complainant's request, it demonstrates that the Council failed to meet the requirements of the Second Principle of Good Administration. I find the Council's failure in this regard to constitute maladministration.
75. I note that following the complainant's expression of concern regarding the Chief Planning Officer's involvement in his complaint, the Council progressed the complaint to stage two. This was following the complainant's email sent on 11 August 2017 in which he states that *'we are well beyond stage one'*. I do not consider that the Council provided the complainant with a response at stage one of the process. Following the complainant's expression of concern, the Council ought to have referred his complaint to an employee at the same grade as the Chief Planning Officer to respond to the complaint at stage one, rather than progressing it to stage two. Although I consider that the Council did not

adequately operate its policy, I am satisfied that it followed a request from the complainant to progress to the next stage of the process. Therefore, I am satisfied that the Council acted appropriately in this instance.

76. At this point, I note that the first stage of the complaints procedure advises the complainant to '*contact the member of staff you were dealing with*'. However, I further note that the Complaints Policy does not provide any guidance to staff regarding what process ought to be followed if the complainant does not wish their complaint to be handled by that particular officer, or if the complaint is about that member of staff. I will reflect this in my recommendations.
77. I am satisfied that as a result of the maladministration I have identified above (paragraphs 71, 72, 73, and 74), the complainant experienced the injustice of frustration and uncertainty.

## CONCLUSION

78. The complainant submitted a complaint to my Office about the Council's handling of his planning application and also of the Council's investigation of his complaint.
79. I have investigated the complaint and found maladministration in relation to the following matters:
- (i) The failure of the Chief Planning Officer to create and maintain adequate records of his preparatory work for the Committee meeting on 19 July 2017; and
  - (ii) The Council's failure to provide reasons for the Committee's decision regarding the complainant's application (deferral).
80. I am satisfied that the maladministration identified resulted in the injustice of uncertainty and loss of opportunity for the complainant.

81. In addition, I also found maladministration in relation to the following matters that caused the complainant to experience the injustice of frustration and uncertainty:
- (i) Excessive delays when responding to all stages of the complaint;
  - (ii) The Council's failure to act in accordance with its policy by not notifying the complainant of the delays or providing him with a revised timescale for its responses;
  - (iii) The Council's decision to forward the complaint to the Chief Planning Officer at stage one of the Complaints Procedure for him to respond to;
  - (iv) The Council's failure to properly consider the complainant's concerns regarding the Chief Planning Officer's involvement with his complaint; and
  - (v) The failure of the complaints investigators to meet with the complainant during the investigation of his complaint.
82. I have not found maladministration in relation to the following matters:
- (i) The Chief Planning Officer's actions in bringing new information to the Committee meeting on 19 July 2017.
83. I note that at the time of writing this report, the complainant's planning application remains '*under consideration*'. I suggest that the Council ought to take immediate steps to address the issues causing this excessive delay so that it may provide the complainant with an outcome to his application.

## **Recommendations**

84. I recommend within **one** month of the date of this report:
- (i) The Council provide the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the frustration, uncertainty and the loss of opportunity caused to him as a result of the maladministration identified;
  - (ii) The Council provide to the complainant a payment of £500 in solatium for the injustice I have identified above; and
  - (iii) The Council implement an action plan to incorporate the following recommendations and should provide me with an update within **three** months of the date of my final report. That action plan is to be supported

by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies) to:

- i. Review the Complaints Policy and consider the inclusion of a section detailing the process to be followed in the event that the complainant raises concerns with the officer handling the complaint at any stage of the procedure; and
- ii. Provide training to relevant staff on the Complaints Policy to include the importance of the requirement to inform complainants if there is likely to be a delay in responding to their complaint, and advise them of a revised timescale for the response.

85. I can confirm the Council indicated that it accepts my findings and will implement all recommendations within the timeframe.



**PAUL MCFADDEN**  
Acting Ombudsman

**March 2020**

### 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.

**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.

