

CAMBRIDGE CITY COUNCIL

REPORT OF: Director of Planning and Environment

TO: Planning Committee

1/3/2017

WARDS: All

LOCAL GOVERNMENT OMBUDSMAN (LGO) COMPLAINT REFERENCE 16 006 971

1 INTRODUCTION

1.1 The LGO has upheld a complaint relating to the determination of a planning application for an access control barrier to a private road (retrospective). The LGO did not find that any of the failures identified amounted to 'significant injustice'. A copy of the LGO decision is attached.

1.2 In summary the Ombudsman's final decision was as follows:

The Ombudsman found fault as a result of Mrs M's complaint about the way in which the Council considered a retrospective planning application for an automatic barrier. The case officer failed to explain in the report that she had not viewed submitted video and photographic evidence. Nor did she tell Mrs M this in advance to allow her the chance to provide it in a different format. The fault caused no 'significant injustice' in the words of the LGO, because the officer provided the planning committee with a separate summary of this evidence and accepted what Mrs M said it contained.

2. RECOMMENDATIONS

2.1 To note that the Local Government Ombudsman has upheld a complaint relating to the determination of a planning application.

2.2 To note that in these circumstances, the Head of Legal Services, as the Council's Monitoring Officer, has an obligation to report the findings to the Executive. The Executive is obliged to set out what

action has already been taken in respect of the findings, what action it intends to take and the reasons for taking the action.

3. THE COMPLAINT AND THE LGO INVESTIGATION

3.1 The complainant complained that the Council failed to properly consider a retrospective planning application for an automated barrier across a nearby private road when it granted planning permission and that the Council failed to properly investigate her complaint. As a result she considered the barrier impacts on her quality of life. The LGO investigated these issues under the following headings:

- Overlooking video evidence
- Inaccuracies in report
- Failure to consider noise impact
- The (Internal Complaints Investigator) complaint process

I have used these headings to set out details of the complaint and the LGO decision below.

Overlooking video evidence

3.2 As part of her representations in response to consultation on the planning application the complainant submitted a dossier to the case officer which included video and photographic evidence, part on paper and part on disc. She offered to convert the photographs/video images to a different format if this was necessary to allow access to them.

3.3 The case officer was unable to access the photographs/video material because these had been blocked by the Council's IT security system. She relied only on the written submissions from the complainant when she prepared her Committee Report. She did not respond direct to the complainant to advise that she had not been able to view the video material or request its submission in a different format. However it was made clear on the Amendment Sheet that photographs/video was not assessed. The assumption was that the photographs/video supported the written material which was referred to.

3.4 The LGO view is that the Committee report refers to the photographs/video and the reasonable inference to be drawn from that is that the case officer had viewed and considered this evidence. The LGO considered that the Council was at fault because there was a failure to clarify what had been viewed. The LGO also found fault

with the Council because the case officer did not contact the complainant to explain why she was unable to view the material and to invite a submission in an alternative format.

- 3.5 However, the LGO did not consider that the inaction by the Council amounted to 'significant injustice' because the fact that the photographs/video were not viewed was made clear on the Amendment Sheet and an objector raised the issue in the public speaking section of the agenda item. The Committee determined the application in the light of this situation and had the opportunity to adjourn while the material was made accessible if they felt this had been necessary.

Inaccuracies in report

- 3.6 The complainant referred to a number of inaccuracies in the Committee Report/Committee debate as follows:

- a) The Chair referred to the road as a dead-end and it is not.
- b) Inadequate explanation of the fact that the location of yellow lines meant that waiting vehicles were outside the complainant's house
- c) The Committee did not note a Councillor's attempt to mediate between the residents and the applicants.
- d) Inadequate explanation of the facts about the previous gate.

- 3.7 The LGO did not find fault with any of these issues.

Failure to consider noise impact

- 3.8 The complainant complained that the Council failed to investigate complaints about noise and that her independent noise survey was not properly considered as part of the application.

- 3.9 The LGO did not find fault in relation to these issues. The LGO accepted that the Council had made reference to the complainant's noise survey in the report and Amendment Sheet and that the noise report was available to the Committee. The LGO considered that complaints about noise had been properly dealt with by the Environmental Health team.

The (Internal Complaints Investigator) complaint process

- 3.10 The complainant considered that her complaints had not been properly considered. The LGO was satisfied that complaints had

been addressed by the ICI and did not find fault with the way in which the Council had dealt with the complainant's complaints.

4 LGO AGREED ACTION AND FINAL DECISION

4.1 The LGO recommends the following action within 4 weeks of the decision (by 20 February 2017):

- a) Send the complainant a written apology for the fault identified
- b) Confirm it has acted on and implemented the complaints officer's (ICI) recommendations

4.2 A written apology has been sent from the Director of Planning and Environment.

4.3 The recommendations of the ICI were as follows (a copy of the ICI letter is attached):

1. The City Council should review its approach and written guidance to planning officers in respect of handling planning application representations supported by digital photographs / video.

2. The City Council should ensure that any guidance agreed is clearly communicated to the public to ensure they understand the acceptability of certain formats of information.

3. The City Council should ensure that members of the public are given clear information about how they might submit / resubmit digital material or have it assessed in an alternative way.

4.4 In response to these recommendations case officers were briefed of the ICI decision when it was published in July 2016. This has been followed up by a further briefing in January 2017 following final decision and recommendations by the LGO.

4.5 The Council does not currently provide any guidance about what type of format information can be supplied in when making representations on planning applications. However the neighbour consultation letter is in the course of being updated to include a recommendation that third parties contact the case officer to discuss submission of photographs/videos and information in digital format. Planning officers are well aware of the need to access all submitted material or find alternatives as an outcome of this ICI/LGO investigation.

5 IMPLICATIONS

- (a) **Financial Implications** The LGO has not recommended the payment of any compensation.
- (b) **Staffing Implications** Planning officers have been briefed about the outcome of the investigations by the ICI and LGO.
- (c) **Equality and Poverty Implications** An equality impact assessment has not been carried out in respect of this report.
- (d) **Environmental Implications** This report has no climate change impact.
- (e) **Procurement** There are no procurement implications.
- (f) **Consultation and communication** No consultations were necessary to prepare this report.
- (g) **Community Safety** No direct or indirect community safety implications.

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

LGO final decision (23/01/2017)

ICI decision letter (29/07/2017)

Planning application file on Public Access webpages.

To inspect these documents contact Sarah Dyer on extension 7153.

The author and contact officer for queries on the report is Sarah Dyer on extension 7153.

Report file:

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