

PLYMOUTH CITY COUNCIL

Subject: Local Government Ombudsman Report
Committee: Audit Committee
Date: 8 December 2016
Cabinet Member: Councillor Ian Darcy
CMT Member: Anthony Payne, Strategic Director for Place
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Ref:

Key Decision: No

Part: I

Purpose of the report: To review the recommendations made by the Local Government Ombudsman (LGO) regarding a complaint from residents of D Street, (LGO ref: 15015955 and 15015963) and to agree actions outlined in this report. The complaint relates to a planning application xyz. It should be noted that the LGO report does retain the confidentiality of certain details and so the Council's report and background papers have followed this and the key for the references can be found in the LGO report.

The Corporate Plan 2016 - 19:

This report is relevant to some of the key values of the Council and in particular:

Democracy – it is important that the Council can demonstrate that residents can have their say about planning decisions in their area.

Responsibility – it is important that the Council takes responsibility for its actions and the impact its decisions can have on others.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land:

In order for the actions recommended in this report to be implemented the following costs have been identified:

Costs already expended

District Valuer – costs of producing valuation report for the two properties in D Street- £2,000

John Grimes Partners – investigation report to consider surface water drainage issues - £9,700

Recommended additional costs

Costs recommended by the District Valuer: £32,500

Compensation to complainants: £1,000

External training for Planning Committee members: up to £1,000

It is proposed that all these costs are met from the existing Strategic Planning and Infrastructure revenue budget. In relation to the review of any new requirement for planners to have chartered town planner status through the Royal Town Planning Institute, any additional costs arising from this review to also be met from the Strategic Planning & Infrastructure budget.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

None.

Equality and Diversity:

No implications

Recommendations and Reasons for recommended action:

It is recommended that the following actions are undertaken in response to the LGO recommendations:

1. Following the publication of the valuation report for the properties in D Street by the District Valuer on 21st November 2016 it is proposed that the Council should pay the complainant Ms C £17,500 and the complainant Mr and Mrs B £15,000.
2. Following the publication of the drainage report by John Grimes Partners it is proposed that no further action is required with regard to alleged deficiencies in the soakaways in the new development subject to planning application xyz.
3. Following the recommendations of the LGO report it is proposed that both the complainants are each given £500 compensation and provided with an apology.
4. Following the recommendation of the LGO report officers make arrangements for external independent training for Planning Committee members through the Planning Advisory Service.

In addition, to further improve the future resilience of future planning decisions, it is recommended that the Assistant Director of Strategic Planning & Infrastructure be instructed to review the requirement for planning officers to have Chartered Town Planner status through the Royal Town Planning Institute.

Alternative options considered and rejected:

The alternative option would be for Members not to agree to the actions proposed for the recommendations provided by the LGO. This option has been rejected because, even though the LGO has no legal power to force the Council to follow its recommendations, the LGO is likely to issue a public non compliance report if it considers that the Council has not properly considered the recommendations of the LGO.

Published work / information:

Background papers:

Title	Part I	Part II	Exemption Paragraph Number							
			1	2	3	4	5	6	7	
Report by the Local Government Ombudsman – investigation into complaints against Plymouth City Council (ref 15015955 and 15015963), 1 September 2016	x									
Valuation report District Valuer, 21 st November 2016	x									
Interim Report John Grimes Partnership, 25 November 2016 (including plans and sections and borehole monitoring data)	x									

Sign off:

Fin	161 713 6	Leg	LS/2 1094 /JP/ Nov 16	Mon Off	DVS 2693 2	HR		Assets		IT		Strat Proc	
Originating SMT Member													
Has the Cabinet Member(s) agreed the content of the report? Yes / No													

1.0 Background

- 1.1 On 26th November 2013 planning permission xyz was granted for a new development., This application was a revision to a previously approved planning permission abc. The application was granted by Planning Committee.
- 1.2 Following the commencement of works on site the Council received complaints from Mr and Mrs B and Ms C both of D Street and these complaints were responded to by the Council on 25th September 2014. The complaints are summarised below:
- Changes were made to the Decision Notice after it had been published.
 - There were inaccuracies in the case officer report regarding the impact of the development.
 - The development had not been built in accordance with the approved plans.
 - There was inadequate public consultation on the planning application.
 - The ecology report was out of date.
- 1.3 The complainants were not satisfied with the Council response and therefore referred the matter to the Local Government Ombudsman (LGO) for consideration. There followed a very detailed investigation by the LGO on the matters originally raised by the complainants and further matters that arose during the investigation. In addition to the complaints raised in paragraph 1.2 the LGO investigated a number of additional matters, the primary ones being summarised below:
- The extent to which the Council considered surface water drainage and the need for consultation with the Environment Agency on this matter.
 - The extent to which the Council properly considered the protection of a Devon hedge on the boundary of the development.

2.0 The investigation of the complaints

- 2.1 The Council has admitted to a number of errors in the way it considered planning application xyz and, as a consequence put in place a number of measures to minimise the risk of these errors arising in the future. These are summarised below.

Changes to the Decision Notice

- 2.2. The LGO considers that the Council was wrong to change a Decision Notice after it was initially issued. The Council admits this was an error. The reason for this change was because the plan numbers in the Decision Notice were incorrectly identified as those from the original planning application. Because the Council considered the error was due entirely to an administrative oversight by the case officer it was considered that no harm was caused by amending the original Decision Notice.
- 2.3 It is acknowledged that there is no legal basis to amend a Decision Notice in this way and therefore the Council has amended its policy on such matters. If a case officer realises that an error has been made, the matter must now be referred to the Head of Development Management and the Council's Senior Planning Lawyer to agree an appropriate course of action.

Inaccuracies in the case officer report

- 2.4 The LGO considers that the case officer report did not properly consider the impact of the development on the complainants' properties and the case officer did not explain these points adequately to Members of the Planning Committee.
- 2.5 Whilst the Council does not admit to any inaccuracies in the case officer report it does admit that the report could have better explained the potential harm that the development would have on the complainants' property. This harm could also have been explained more fully to Members of the Planning Committee. One of the recommendations in this report is therefore for the Strategic Planning and Infrastructure Department to review the resilience of its Planning officers and to look to ensuring that all relevant officers obtain chartered planning status through the Royal Town Planning Institute (RTPI).

Inadequacy of the public consultation for the planning application

- 2.6 The LGO considers that the public consultation was inadequate, that site notices were not erected as indicated by the case officer and the complainants were not given adequate opportunity to be aware of, or comment on, planning application xyz.
- 2.7 The Council strongly disputes that it did not carry out adequate public consultation. It maintains that site notices were erected in accordance with its own publicity code and has provided documentary evidence that one of the complainants was contacted by email to advise of the Planning Committee meeting. However, in order that the Council can evidence in the future that it has met its own public consultation requirements, officers now take a photograph of all site notices in situ when they are erected and provide a written record of all site visits undertaken.

Consultation on surface water drainage solutions

- 2.8 The LGO considers that the Council should have consulted the Environment Agency on the appropriate surface water drainage solution for the development. As the planning application site area exceeded 1 hectare the Environment Agency were, at the time, a statutory consultee. The legislation has since changed with the introduction of the Local Lead Flood Authority to consider certain developments. The reason given by the case officer why the Environment Agency was not consulted was because the area of development was less than 1 hectare (excluding the part of the site to be retained as open space). The Council admits it was wrong to make this conclusion following the receipt of independent legal advice on this matter.
- 2.9 Although the Council has always maintained that the surface water drainage solution is sufficient for the development and has received no evidence from the LGO that there are any deficiencies now that the development has been built, the statutory consultation requirements for surface water drainage have been reinforced by managers with case officers.
- 2.10 In addition to the above the Head of Development Management undertook a workshop with all case officers to ensure that the lessons outlined above are learnt and changes have been made to the Development Management Officer Manual to reinforce these points.

3.0 The LGO response

3.1 Notwithstanding the response provided by the Council to the complaints, as outlined in section 2 of this report, the LGO published a report of its recommendations on 1st September 2016, which was then made public on 15th September 2016. The lengthy delay in the publication of the LGO report was due in part to the number of disagreements that the Council had with the LGO over the accuracy of the LGO's initial findings, the harm that resulted to the complaints and the appropriate remedy to this harm. However the LGO considers that "[the Council] has shown no regard to the harm it may have caused, nor any understanding of the principles of natural justice, in particular that it cannot judge in its own cause".

3.2 The LGO made four recommendations and these are outlined below:

1. Ask the District Valuer to assess the current value of the complainants' two properties and the value that would have been attributed to each of the properties in the event that the development had been constructed in accordance with the plans previously agreed (Abc). The Council should pay Mr and Mrs B the difference between the two valuations on their property and it should pay Ms C the difference between the two valuations on hers. Unless the Council has a legally binding arrangement in place for the developer to replace the Devon hedge bank, the current valuations should make no assumptions about its ability to provide screening;
2. Pursue the proposals in its drainage report. If the soakaways are deficient and it is not able to take appropriate remedial action against the developer, it should remedy the deficiencies so far as are necessary to protect the complainants' properties and this work should be complete before the onset of winter. Engineers commissioned by the Council have said how, as a last resort, a drain could be laid along the footpath on land the Council owns;
3. Apologise to each family and pay each £500 in recognition of the time and trouble to which they have been put, the frustration they have experienced and their consequent loss of confidence in the Council; and
4. Arrange for all Members of its planning committee to have at least one day's training from professionally qualified planning officers who are not employed by the Council. The purpose of the training should be to ensure Members are equipped and confident to challenge the view of planning officers prior to making decisions.

4.0 Council response

4.1 LGO Recommendation I- valuations

4.1.1 The Council commissioned the District Valuer to undertake a valuation as outlined in recommendation I. The District Valuer concluded that "it is a difficult and somewhat subjective judgement" as to whether the development has impacted on the value of the complainant properties. However, the District Valuer did conclude that there would be a relatively small variation in the valuation of the properties that amounted to 6.2% of the value of Ms C's property and 5.8% of Mr and Mrs B's property. This equates to compensation of £17,500 to Ms C and £15,000 to Mr and Mrs B.

4.2 LGO Recommendation 2 – surface water drainage

4.2.1 The Council commissioned John Grimes Partners to arrange a topographical survey of the manholes and ground near the soakaways and affected land and to carry out a trial excavation at the soakaway sites of both the relevant properties to confirm that they have been constructed as per the details and carry out soakage tests. The conclusion from this independent investigation was that the soakaways are working effectively and that no additional actions are necessary.

4.3 LGO Recommendation 3 – compensation and apology

4.3.1 The Council intends to compensate each of the complainants by £500 and to apologise as advised by the LGO.

4.4 LGO Recommendation 4 – Planning Committee training

4.4.1 Officers have liaised with the Planning Advisory Service which forms part of the Local Government Association to provide advice and support to local planning authorities. A one day member training course is being organised in 2017 with external independent facilitators for Planning Committee Members at a cost of £1,000. It is proposed that the Planning Committees of neighbouring authorities are invited to also attend this training to both share the cost and to share best practice.

5.0 Conclusion

5.1 There are lessons to be learned from the way in which this planning application was considered and improvements to existing processes to address some of the issues highlighted by the LGO have already been implemented.

5.2 There are, however, still some areas of dispute between the Council and the LGO on the LGO's final conclusions regarding the complaints from the residents of D Street. Notwithstanding those areas of dispute, officers recommend that the LGO recommendations are complied with in full as outlined in this report.