

PLYMOUTH CITY COUNCIL

Subject: Issues Arising From Local Government Ombudsman (LGO)
Investigation 15 015 955 & 15 015 963

Committee: Audit Committee

Date: 8 December 2016

Cabinet Member: Councillor Darcy

CMT Member: Lesa Annear (Strategic Director for Transformation & Change)

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Ref: AUD/RH

Key Decision: No

Part: I

Purpose of the report:

In September 2016, Plymouth City Council received a final report from the Local Government Ombudsman (LGO) regarding their investigation into complaints made in connection with the Council's administration and determination of a planning application.

This report considers the events that led to the Local Government Ombudsman's (LGO) findings, the recent procedural changes made and the effectiveness of these changes in reducing the risk of future occurrence of such issues.

The Corporate Plan 2016 - 19:

The work of the internal audit service assists the Council in maintaining high standards of public accountability and probity in the use of public funds. The service has a role in promoting high standards of service planning, performance monitoring and review throughout the organisation, together with ensuring compliance with the Council's statutory obligations.

The delivery of the internal audit service assists all directorates in delivering outcomes from the Corporate Plan:-

- Pioneering Plymouth – by ensuring that resources and assets are used wisely so that the books balance and the services delivered focus on the needs of the customer;
 - Confident Plymouth - citizens, the private sector, government and other agencies have confidence in the Council and partners.
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Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land:

None

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

The work of the internal audit service is an intrinsic element of the Council’s overall corporate governance, risk management and internal control framework.

Equality and Diversity

Has an Equality Impact Assessment been undertaken? No

Recommendations and Reasons for recommended action:

It is recommended that the report be noted, in particular that,

- Where the Council has accepted the LGO conclusions, they have amended procedures where appropriate;
 - Officers are considering our further recommendations for improvement.
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Alternative options considered and rejected:

None.

Published work / information:

None

Background papers:

Title	Part I	Part II	Exemption Paragraph Number						
			1	2	3	4	5	6	7

Sign off:

Fin		Leg		Mon Off		HR		Assets		IT		Strat Proc	
Originating SMT Member													
Has the Cabinet Member(s) agreed the contents of the report? No													

Internal Audit Report

Issues arising from
LGO Investigation
15 015 955 & 15 015 963.

December 2016

Robert Hutchins
Head of Devon Audit Partnership



Auditing for achievement

Devon Audit Partnership

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The partnership is committed to providing high quality, professional customer services; if you have any comments or suggestions on our service, processes or standards, the Head of Partnership would be pleased to receive them at robert.hutchins@devonauditpartnership.gov.uk

Confidentiality and Disclosure Clause

With regard to the National Protective Marking Scheme this report is not protectively marked, however, it has been prepared for the organisation's use. We can take no responsibility to any third party for any reliance they might place upon it.

1 Introduction

On 1 September 2016, Plymouth City Council received a final report from the Local Government Ombudsman (LGO) regarding their investigation into complaints made in connection with the Council's administration and determination of a planning application.

The LGO report refers to 'fault' on the Council's part which the LGO consider has caused 'injustice' and remedial recommendations have been made. The Council accept that it has been at fault for some of the issues raised but also dispute some of the LGO findings.

In response to the LGO investigation and report, the Council implemented procedural changes within the Planning system to strengthen existing controls. The Council currently intend to implement all of the recommendations arising from the final LGO report.

The purpose of this review has been to consider the events that led to the LGO findings, the recent procedural changes made and the effectiveness of these changes in reducing the risk of future occurrence of such issues.

The LGO investigation was a lengthy process and included a significant amount of correspondence with the Council resulting in a number of draft reports. Due to time constraints this review has focussed on the LGO's final report and the Council's position in respect of that report.

2 Work undertaken

- Fact finding meetings have been held with Head of Legal Services, Head of Development Management and Senior Planning Lawyer;
- A review has been undertaken of the correspondence between the Council and the LGO since the LGO became involved in this matter in January 2015;
- A review has been undertaken of the current procedures operating within the Planning Department since the finalisation of the LGO investigation.

3 Summary of Findings

The LGO final report found 'fault' in four areas associated with the planning application in question:

- the way the application was publicised,
- the consideration of the application,
- the consideration of the conditions,
- the consideration of the initial complaint.

It is clear that the Council and LGO have some fundamental disagreements with the 'faults' found. However, the Council has accepted that it made the following mistakes:

- It failed to obtain a flood risk assessment or consult with the Environment Agency (EA) due to a mistake in the case officer's measuring of the site,

- It made reference to previous plans within the Officer Report, which went to Planning Committee on 10 October 2013, and the decision notice which was subsequently issued,
- the case officer issued a revised decision notice listing the correct plans without referring it to a senior manager or Legal Services for approval,
- the case officer did not explain the impact of the application on the complainants' properties as clearly as he could have done.

The Council have implemented procedural changes to address some of the issues raised by the LGO:

- current procedural guidance now stipulates that no amendments should be made to a decision notice without prior referral to the Head of Development Management or Legal Services,
- photographic evidence is obtained and retained showing the installation of planning site notices.

The Council also intend to implement the LGO's recommendation regarding the arrangement of independent training for the members of Planning Committee.

4 Conclusions

Of the procedural changes made, the most significant is the obtaining and retention of evidence regarding site notices. Had the Council been able to demonstrate, to the LGO's satisfaction, that the application had been properly publicised and that the complainants had the opportunity to raise their concerns prior to Planning Committee then it is probable that the weight afforded to some of the LGO findings would have been reduced or removed entirely. Demonstrable evidence that the site notice had been in place would also have added weight to the Council's contention that the lack of representations received was a contributory factor to the way in which it considered the application i.e. that the lack of representations was consistent with its own view that the changes from the initial application were relatively minor and were acceptable in respect of the impact on the complainants' properties and as such were not addressed more fully within the officer report.

As part of this review the Planning Department have demonstrated that the installation of site notices is now being evidenced. However, some further clarification is required regarding the robustness of the evidence, for example, the date and time of photographs taken.

There remains a level of reliance upon the professionalism and performance of individual case officers, as the checking and oversight of officer work is said to be limited in cases where the officer is senior / experienced and the planning matter considered relatively minor or uncontroversial. In the case in question, the case officer was an experienced member of staff who was 'acting up' as a Team Leader and as referred to above, the lack of representations received strengthened the Council's view that the application was not overly contentious. Due to the volume of planning applications received by the Council it is accepted that scrutiny of officer work is undertaken using a risk based approach. It was noted however, that at the time of the application in question, the case officer was also

leading on a large, high profile application and as such, under those circumstances, it is considered that a more thorough assessment of the officer's work should have been made.

Of the issues where there remains dispute between the Council and the LGO, a number exist because the LGO were not persuaded by the evidence presented by the Council. Notably, this related to letters emailed to persons who had made representations regarding the second application, including one of the complainants, and evidence as to why the Council decided to only notify minor changes to the application to interested parties for whom it had an email address. The Council have copies of the letters they advise were emailed and site notices do state 'if you want to be kept up to date with the planning application's decision please include your email address'. Moving forward, It is considered that the Council's position could be strengthened through retention of any emails sent and by substituting the word 'decision' with the word 'progress' within site notices.

The Council dispute the findings in respect of the consideration of conditions which include the developer's surface water drainage proposals, however, as referred to previously, the Council is intending to progress all of the LGO recommendations including remedying any deficiencies with the site drainage, of which none have been identified to date.

There remain some LGO findings that the Council have considered but have determined that officers will continue to act in the same way in similar circumstances. For example, the Council consider LGO criticism of the use of the word 'revision' in the description of the second application is unfair and maintain that this would have been helpful to the public in highlighting the link to the previous application. In considering these issues we do not see any clear reason to further question the Council's position, however, it should be noted that this review has only had opportunity to obtain clarification from Council officers and has not had any input from the LGO or its investigator.

There has been criticism from the LGO that the Council's assessment of the initial complaint only found one fault, that the incorrect plans were listed on the decision notice. Our review has established that, following receipt of letters and a number of emails from the complainants, the Council logged these as formal complaints. A response was provided to the complainants by the Director of Place, who has confirmed that he reviewed the case following discussion with the Head of Development Management. Subsequently, during the course of the LGO investigation, the Council accepted further fault in respect of its failure to consult with the Environment Agency. During our review Officers have advised that at the time of the initial complaint it was not considered that any mistake had been made in this regard and that this was only recognised following specific challenge from the LGO and the subsequent obtaining of external legal advice. In view of this, it is considered that the initial failure to find fault with the EA consultation process was a result of the technical nature of this specific consultation requirement and not an indication that the investigation process wasn't sufficiently thorough. Furthermore, it was noted that other grounds of complaint raised were, and continue to be, refuted by the Council.

Overall, it is considered that, following the LGO investigation, the Council has improved its procedures, such as the photographing of site notices, and that this will provide some mitigation against the risks of similar occurrences in respect of the 'faults' identified. However, where 'faults' identified have not led to a procedural change, reliance remains upon the professionalism of case officers and the Planning Department's quality assurance arrangements.

We set out below further recommendations that officers should consider to further strengthen procedures.

5 Audit Recommendations

- R1** When photographing site notices Planning Officer's should endeavour to include a date and time stamp on the image
- R2** Site notices should be photographed whenever the Planning Department make a further site visit.
- R3** Consideration should be given to whether current quality assurance arrangements sufficiently cover all circumstances where more thorough scrutiny may be required, for example the nature and extent of a case officer's workload.
- R4** Where interested parties are informed of an application's progress via email, the communication sent should be retained.
- R5** It is suggested that the following wording within site notices 'if you want to be kept up to date with the planning application's decision please include your email address' should be amended to read 'progress' rather than 'decision', as it is considered that this is a clearer reflection of the Council's process.