

Section H: Planning

H1: Enforcement

Inconsistent decisions – insufficient reason for departure from policy

1. Mrs Ash complained that over a period of some ten years a council failed to ensure compliance with enforcement notices issued against her neighbour, Mr Hazel, for unauthorised development. Instead, contrary to national and local policies, the council granted him planning permission for development on green belt land opposite her home. She said that, as a result, she had suffered nuisance, abuse and harassment from Mr Hazel, her amenity had been affected by the development and her property had been devalued. Mrs Ash believed that many other disputes between her and Mr Hazel, involving boundary questions, the destruction of property and assault, would not have happened if the council had applied approved policies designed to protect the green belt from inappropriate development.
4. In November 1993 the planning committee resolved that action should be taken to demolish all the buildings except the snooker room which Mr Hazel was occupying as a residence. In December 1993 that decision was amended by the policy executive; the revised decision required the demolition of all the buildings. In turn, that decision was later revoked, in October 1995, and the previous decision was reinstated. Mr Hazel then applied for planning permission to retain his living accommodation in the snooker room, and in December 1995 the council indicated that Mr Hazel would be given permission provided he removed the other buildings. The final decision of the council, in January 1997, was to allow Mr Hazel to retain the building he lived in and the garage, with the permission being only for the benefit of Mr Hazel and his family.

Events

2. Between May 1986 and June 1995 the council tried to stop what it considered to be Mr Hazel's unlawful development on a site in the green belt. This comprised a gymnasium, a garage and a snooker room, originally used with a dwelling on an adjacent site. When Mr Hazel sold the dwelling he moved into the snooker room building and used it as a dwelling house, and used the garage building as a store.
3. Early on, a planning inspector's decision established for the council beyond doubt that the buildings on the site, and Mr Hazel's residential occupation of one of them, were contrary to green belt policy and harmful to the green belt. Two prosecutions followed in 1989 and 1993, the substantial timescale between them being unavoidable

Reversal of policy

5. There was what the Ombudsman described as an extraordinary reversal of policy. This reversal of policy was made against officer advice. The Ombudsman acknowledged that members were the decision takers in the planning process and, although they had to give careful consideration to the advice of their officers, they were not bound to abide by it.
6. The Ombudsman had no doubt that throughout what he recognised as a difficult case, the members had acted in good faith and with the best of intentions. But he considered that the

reversal of policy was fatally flawed. The case against approving the application for the retention of the snooker room as living accommodation was the weight of Government advice and the council's own development policies. The case was given added authority by the conclusion of a planning inspector that this particular development was indeed harmful to the green belt. The Ombudsman said:

"It seems to me that the council, as public custodian of the green belt, had to have very special reasons indeed for concluding that development it had considered for so long to be an offending use, could now be permitted."

7. The only reason members had in front of them to support their decision was a statement in their officers' report that Mrs Hazel had written to the council about one of her sons. He was autistic and was attending the Great Ormond Street Children's Hospital; she thought it was good for him to have a large garden to play in; and the family had lived in that road for 24 years. Officers commented that these facts were clearly important to the family, but did not necessarily amount to very special circumstances sufficient to overcome the restrictive green belt policies, or justify a decision inconsistent with the council's previous approach.
8. The Ombudsman said that it might just be conceivable that Mrs Hazel's son's medical condition might combine with length of residence and a large garden to amount to a material consideration that members could properly take into account. But it would have required much more substantial justification than was provided by Mrs Hazel's letter as quoted in the officers' report to justify overturning the clear presumption against permitting development in the green belt. At the very least, members should have sought further information, which might well have involved specialist

medical and legal advice. The Ombudsman concluded that there was insufficient information in front of members for them to judge that these other matters were relevant considerations. Taking them into account when deciding to permit the retention and residential use of the snooker room was maladministration.

9. Members said they were looking for a pragmatic solution to the problems Mr Hazel posed. The Ombudsman believed that was one reason why they did not give sufficient scrutiny to whether the circumstances outlined in Mrs Hazel's letter could properly be considered material planning considerations. He commented:

"They were happy to clutch at a straw. But this was a straw which could not bear the weight members wanted to put on it."

10. The Ombudsman also criticised the members for not paying due regard to Government guidance and their own policy, and said that ignoring those relevant considerations was maladministration. It was clear that the committee's decision was made on the basis of taking into account the personal circumstances of the applicant. The committee failed to minute that reason and that also was maladministration.

Injustice

11. The Ombudsman concluded that without the maladministration, the council would have pursued its longstanding objective of demolishing the buildings and not permitting continued residential occupation of the snooker room. Accordingly, Mrs Ash was left with development neighbouring her which should not have been permitted. Mr Hazel had the right to continue living there and that was a particular source of grievance for Mrs Ash. But the Ombudsman did not

believe that the council should be held responsible for the longstanding dispute between Mrs Ash and Mrs Hazel which predated the maladministration.

Remedy

12. The Ombudsman recommended the council to:

- commission an independent valuation of Mrs Ash's home as it was and as it

would have been if the snooker room and garage had been demolished and not used as residential accommodation;

- pay Mrs Ash any difference between the two valuations; and
- pay her a further £250 as some recognition for her time and trouble spent pursuing her complaint with the council and with the Ombudsman.

(Report 96/B/4757)

H2: Enforcement

Failure to comply with condition of planning permission – negotiation ineffective – members' interests – inappropriate role of private meeting

1. Mrs A lived near a Sikh temple. She complained that the council failed to ensure that some of the conditions attached to the planning permission were fulfilled; and that she suffered loss of residential amenity due to excessive noise from the temple.

amplified microphone. A number of windows in the temple were open and the officer considered the music and chanting to be appreciably intrusive.

4. The council's reason for imposing the condition relating to noise insulation works was to protect neighbours from disturbance. The Ombudsman said:

Noise nuisance

2. The temple had been in use for some six years at the time of the Ombudsman's report. One of the conditions of the planning permission required the completion of noise insulation works to the temple prior to its occupation. No scheme to achieve compliance with that condition had been approved by the council. The council believed that the best way to achieve compliance with the various conditions was through negotiation. It had a number of meetings with the temple trustees and their agents to seek to resolve matters without recourse to formal action.
3. On a site visit, a planning enforcement officer witnessed noise from an

"In general terms, the council's stance of seeking to negotiate compliance with conditions is a sensible way to proceed. In this particular case, however, it seems to me that the question of compliance was allowed to drift unnecessarily. A period of at least six years for the council to achieve its legitimate planning objectives is far too long and amounts to maladministration."

Temporary building

5. Mrs A also complained about a temporary building which had been used for some nine years without the benefit of planning permission. In particular, she was concerned about

the disturbance arising from the use of the building for a children's summer school on three occasions.

6. The Ombudsman said that the council's failure to regularise the planning permission of the temporary building was also maladministration.

Member's interest

7. A member of the council was an elder of the temple and its secretary. He was not involved in the council's formal decision-making process affecting the temple. But he did involve himself in private meetings with the chair of the sub-committee, the temple's architect and council officers. This was after the relevant sub-committee had resolved to take enforcement action in respect of the temple unless certain requirements were fulfilled.

8. The member said that he attended these meetings as the temple's representative and not as a councillor. This was a distinction he was not entitled to make. The Ombudsman said:

"He was dealing with council business, and at the same time pursuing his private interest as secretary and elder of the temple. As far as any member of the public might view the matter, his status as a councillor could not be disclaimed."

9. The Ombudsman said that the member should have absented himself from the meetings and ensured that the temple was represented by others. By not doing so he breached the *National code of local government conduct* and that represented maladministration by the council.

Private meetings

10. The Ombudsman also questioned the purpose of the private meetings. The Ombudsman said:

"Negotiation was appropriate and necessary in a matter of some considerable sensitivity. But the council must be seen to be acting evenhandedly when it is trying, as here, to balance the competing needs of developers and those who feel themselves disadvantaged by development."

11. The two private meetings took place after the sub-committee had decided on a certain course of action. There were no notes of the private meetings. The effect of the two meetings was to hold in abeyance the action agreed by the sub-committee, as a planning officer instructed the council's solicitor not to proceed with the issue of enforcement notices. In other words, the private meeting countermanded the sub-committee's decision. That was an action no officer or member had the power to take. At the very least, the Ombudsman said, the circumstances should have been reported back to the sub-committee. The failure to do that was maladministration.

Outcome

12. The Ombudsman found that, as a result of the council's maladministration, Mrs A suffered a long period of avoidable disturbance from the temple. He recommended the council to pay her compensation of £1,750. The Ombudsman was aware that another neighbour had complained frequently to the council for similar reasons, though that neighbour had not complained to the Ombudsman. The Ombudsman expressed the hope that the council would consider paying compensation to that neighbour also.

(Report 97/B/1118)

H3: Enforcement

Conversion of building to café – nuisance to neighbouring business – failure to ensure compliance with conditions

1. Ms Clifton complained that a council did not enforce conditions attached to the planning consent for a café beneath her retail business before and after the opening of the café.
5. The condition requiring ventilation included a requirement for the developer to submit full details of the scheme before the café was opened. He did not do so. The council took no action to enforce that condition and that failure resulted in exactly the problems that the condition was intended to prevent (ie detriment to Ms Clifton).

The complaint

2. Ms Clifton complained that excessive smells and fumes from the café invaded her premises and detrimentally affected her goods. Her business used delicate fabrics. She said that the smell permeated the fabrics and this had been commented upon both by her staff and her customers.
3. Ms Clifton complained to the council over a period of a year. She then complained to her Member of Parliament and the Ombudsman.

Conditions

4. The council recognised, before it gave planning consent for the café, that the preparation and serving of food and hot drinks would be likely to have an adverse effect on Ms Clifton's business unless properly controlled. So the council attached conditions on the planning consent about the use of the premises and the need for adequate ventilation. The council was then under an obligation to ensure that as far as reasonably practicable the developer met the conditions imposed.

Delay

6. After about 18 months, the council took enforcement action. But it appeared that the council only began to make proper progress in enforcing the conditions after Ms Clifton had complained to the Ombudsman and her MP. The Ombudsman commented:

"Complainants should not have to rely on the intervention of myself or of a Member of Parliament before the council is prepared to address firmly a problem which has been in existence for some time and of which the council is well aware."

Outcome

7. The Ombudsman considered that the failure to enforce the condition was maladministration which caused injustice to Ms Clifton. The council was recommended to pay £400 compensation.

(Report 97/C/1829)

H4: Enforcement

Extension to public house – condition requiring noise not to exceed noise level in neighbouring property – condition incapable of achieving its purpose

1. Ms Palmer complained that a council failed to take effective action to prevent noise from a neighbouring pub affecting her property and spoiling the quiet enjoyment of her home.
2. Ms Palmer lived in a row of terraced houses. When she bought her home, there was one house between her and the pub. The pub subsequently bought the house next door and made a planning application to add it to the pub.
3. The council gave planning permission with a condition requiring additional sound insulation to ensure that noise in the adjoining property did not exceed the background noise level. After the extension to the pub was carried out, Ms Palmer complained about noise. The council established that the background noise level was exceeded frequently.
4. The council served a breach of condition notice. But one of its legal officers then advised that the planning condition was defective. To be able to check that the condition was being complied with, the pub owners needed to have access to the neighbour's home to take measurements. That access was not directly available and so the legal officer believed the owners would have a satisfactory defence to any prosecution. The legal officer's view was that the condition should have been drafted so as to specify a level of noise within the public house. Such a condition would have been capable of being monitored by the landlord.
5. The Ombudsman recognised that the council's intention was that the level of noise entering Ms Palmer's property should not exceed the background noise level. But that intention could not be fulfilled because of the council's failure to attach a valid and enforceable condition to the planning permission.

Planning permission

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Defective condition

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Outcome

6. The Ombudsman welcomed the action taken by the council in agreeing with the landlord that a noise cut-off device should be installed in the pub. But this would not, the Ombudsman thought, achieve the council's intention, because there was no power to compel the landlord to use the cut-off device and he might choose not to do so. The Ombudsman recommended that the council should appoint an independent sound engineer to design a scheme which would achieve the council's intention and implement that scheme at the council's expense, providing the landlord was agreeable. If this was not possible the council should commission an independent valuation of Ms Palmer's home, both with and without an effective scheme of noise limiting works, and pay her any difference in value.
7. In either case the council was recommended to pay Ms Palmer £750 to reflect the disturbance she had suffered and her time and trouble in pursuing the complaint.

(Report 96/B/1733)

H5: Enforcement

Waste transfer – potential county matter – unreasonable delay in taking enforcement action – failure to verify planning status of site prior to issue of waste disposal licence

1. Three local residents complained about the actions of their district council and their county council in respect of a site near to their homes. They said that, as a result of failures by both councils, there had been a detrimental effect on their amenity and their quality of life over a period of some six years, as they had to endure noise, dust and inconvenience because of waste transfer activities at the site.

What happened

2. In January 1992, two of the residents made complaints to the district council about commercial activities at the site and, in particular, the use of green belt land for waste storage purposes. The site owner maintained that a commercial use had been in existence for some 60 years and was therefore established in planning terms. The council accepted that there was some existing commercial use at the site, and decided to issue an enforcement notice to limit and restrict the unauthorised development at the site, rather than to require cessation of all activities. Subsequently, the council concluded that it had been misled as to the commercial use of the site. In October 1994 it withdrew the first enforcement notice and substituted another requiring the owner to discontinue using the land as a waste transfer business. The owner appealed, lost the appeal, failed to comply with the notice, and was prosecuted and fined.

A county matter

3. The three residents argued that, as waste transfer activities were a county matter under the relevant legislation,

the district council should have referred the matter to the county council for consideration. The district council's view was that it had no clear evidence of waste transfer activities at the site until 1994 and did not consider therefore that consultation with the county council was required. It also said that it was likely that the county council would have left the matter to be dealt with by the district council, because its guidance suggested that it was only where the refuse/waste was the primary use of the site that it would be a county matter.

4. The Ombudsman did not accept this view. The committee report in May 1992 clearly stated that one part of the site was devoted entirely to a commercial use which appeared largely to be waste transfer activities. Furthermore, the county council guidance suggested that enquiries whether a proposal was a county matter should be determined by the county council. It seemed to the Ombudsman that there was sufficient evidence to suggest that the activities at the site were potentially county matters, and that consultation with the county council was warranted. The district council's failure to carry out that consultation was maladministration. However, the Ombudsman could not safely conclude that the county council would have taken over responsibility for considering the use of the site, and therefore could not say that any injustice was caused by this failure.

Investigation

5. The Ombudsman thought that if the district council had researched more

thoroughly the history of commercial activity of the site, for example by consulting the complainants and other local residents, it would have learned much sooner that commercial activity to the extent suggested by the owner had not been established at the site until the late 1980s. In his appeal decision, the Secretary of State concluded that the previous low level commercial use of the site was far removed from the use of the land for waste transfer activities.

6. For those reasons the Ombudsman did not think that the decision to under enforce was reached properly by the council because it ignored relevant information that should have been obtained. That was maladministration.
7. As a result, it was more than two years before the second enforcement notice was issued, requiring total cessation of activities at the site. It seemed to the Ombudsman that, had the matter been properly researched at the beginning, there was no reason why that action could not have been taken in the first place. The result was that

the complainants suffered avoidable loss of amenity for more than two years as a direct consequence of the council's delay.

Issue of licence

8. The Ombudsman also found that the county council was at fault for acting beyond its powers in issuing a waste licence to the site owner, even though the site did not have the benefit of planning permission. Although the county council consulted the district council, it failed to verify the planning status of the site and that failure was maladministration.

Remedy

9. The Ombudsman recommended that the district council should pay each complainant compensation of £1,675; and that the county council should pay each complainant £1,275.

(Report 96/B/3948 etc)

H6: Grant of permission

Effect of delay in issuing a planning decision notice

1. Mr Hamilton complained that a council had failed to issue a planning decision notice within a reasonable time while leading him to believe that the notice would be issued immediately.

The planning application

2. Mr Hamilton made a planning application for five houses. The council notified a number of neighbours.

Among the objections to the application was one concerning the impact on a particular house. Mr Hamilton agreed to amend the plans to reduce the impact. The amended plans were received by the council after the case officer had submitted his committee report seeking authorisation for officers to approve the application on receipt of a revised drawing. The committee accepted that recommendation.

3. Mr Hamilton said that he spoke to the case officer the following day, and was told that the plans had been approved and that the decision notice would be issued within a few days. He gave in his notice at work and set about organising loans with a view to site contracts being exchanged on his last day of work, which was 23 May, and with development beginning a few days after that. He made enquiries of the case officer during the next two weeks and was told that there was a delay in producing the notice because of a backlog of work.

Decision notice deferred

4. Meanwhile, people living near the site were making representations to a ward councillor about the development, including complaints by some residents that they had not received notification letters. As a result, the case officer was asked to delay the issue of the decision notice and the committee chairman agreed that residents should be given a further 14 days in which to raise any new matters. If any new matters were raised, the decision was to be referred back to the committee.
5. The case officer and the committee chairman agreed that the responses did not disclose any new matters. Approval was given by the use of delegated powers and the decision notice was issued on 5 June.
6. Mr Hamilton said that, because of the delay, he incurred the costs of legal advice; lost income by leaving his job earlier than was necessary; incurred additional loan interest; and was caused unnecessary stress.
7. The Ombudsman did not doubt that an assurance that a decision notice approving the planning application would be issued within about a week of the committee meeting was given in good faith by the case officer. But the

assurance was over-optimistic in the light of the backlog of work.

8. The Ombudsman did not question the good intentions of the members and officers who decided that consultation should be reopened. However, they did not consider the effect on Mr Hamilton of this further delay.
9. If the decision notice had been issued within normal timescales (the usual expectation was within three working days), further consultation would not have taken place. Mr Hamilton was therefore a victim of delay in issuing the decision notice and of the council's failure to consider the effect on him of reconsultation. That delay was maladministration.

The developer's position

10. Mr Hamilton knew he needed the decision notice before starting work on the site, but he handed in his notice at work and made financial commitments so as to be ready to start the development as soon as his period of notice had expired on 23 May. The Ombudsman commented:

"I have previously commented that it is a mistake for a developer to make major business decisions and expenditure commitments in advance of a council's decision and I have reduced the level of compensation accordingly."

11. In this instance, the Ombudsman did not think that, in relying on the officer's assurance that the decision notice would soon be issued, Mr Hamilton acted recklessly in ensuring that he would be ready to start the development as soon as possible. His period of notice allowed four weeks for the issue of the decision notice. He had no reason to suspect that there would be any problems. Nor, indeed, could the case officer have warned him of the possibility of consultations being

reopened, as it had never happened before. However, Mr Hamilton had received the council's warning about not starting work before the receipt of the decision notice. He was also present at the meeting where the committee delegated the final decision to officers. The Ombudsman thought Mr Hamilton had to accept some responsibility for the losses he incurred. Nevertheless, the Ombudsman found that injustice resulted from the council's maladministration and recommended that the council should

pay Mr Hamilton £600, representing half the costs he claimed, together with £150 for the extra stress, time and trouble he suffered.

Time targets

12. The Ombudsman was pleased to note that the council now placed more emphasis on meeting time targets for the issuing of decision notices.

(Report 97/C/850)

H7: Grant of permission

Failure to assess application adequately – significance of site levels

1. Four residents complained about the way a council approved a planning application for a major residential development at the rear of their houses. Their concern was that the houses in the new development had been built more than a metre higher than the previous ground levels. As a result, the development unreasonably overlooked their gardens and the living areas of their homes, interfering with their privacy.
3. The case officer received further plans which showed the height of each slab above sea level. He compared those levels with the only other reference he had been given earlier which was the height of the road junction to the north east of the site. He considered that the difference between the slab levels and the reference point was not significant and that the levels for the site were acceptable. Full planning consent was given.

What happened

2. The complainants' rear gardens abutted the southern boundary of the development site. The application was for 20 houses. The plans included no reference to what the ground level would be or how high the houses would rise. The council granted planning permission in principle, subject to a number of reserved matters including provision of plans showing levels and figured dimensions.
4. When work commenced, the complainants noticed a large amount of fill arriving on the site and queried this with the council. It was these queries which first alerted the council to concerns about the height of the development. The developer explained that levels had to be raised in order to permit a gravity storm water drainage system, and that this involved dwellings towards the southern boundary of the site being raised by some 1.1 metres above the level of the original land.

Guidance to officers

5. Before the time when this development was approved, the council had had some difficulty with a different planning application because of the levels of the site, and this had prompted a report to council members which was subsequently issued as a guidance note to all development control staff. This pointed out that a considered decision required details of ground and floor levels when there was a difficulty with levels or a technical reason such as gravity falls for drains. Only where a site was flat and there were no such technical matters raised on the plans was it reasonable to assume a normal ground to floor relationship of some 150–250mm difference.

Why the problem occurred

6. In this case, the planning committee approved the application subject to the provision of levels and figured dimensions in relation to the nearest neighbouring dwellings. The case officer obtained this information and assessed it, comparing the slab levels shown with his only point of reference, which was the street level to the north of the site. But in doing so he had assumed that the plot was level. It was not, but was gently sloping down to the southern boundary. This was not apparent to the case officer when he first inspected the site, which was then covered with high grass.
7. The reference point to the north was inadequate by itself to assess the height of houses at the southern end. Because the case officer erroneously thought the site was level, and because he did not appreciate the consequences for ground levels of gravity rather than pump drainage, he did not assess properly the impact of the development on the complainants and the residents on the southern side.

The Ombudsman found that was maladministration.

8. The Ombudsman commended the case officer for the openness with which he admitted fault and the assistance he gave in the investigation.

Injustice

9. Because of the maladministration, the council's policy of protecting the privacy of neighbouring residents was breached. Living and garden areas were overlooked by other living and garden areas, despite the efforts which were made to ameliorate this effect through lattice and screening plants. The back-to-back distances between the complainants' houses and the new developments, while longer than the minimum usually allowed, were in the case officer's professional opinion insufficient to overcome this breach of privacy. The member who was at the time chairman of the planning committee said that he believed the committee would have rejected the application if the height issue had been known.

Remedy

10. The Ombudsman recommended that the council should:
 - commission a valuation of each of the complainants' houses to establish whether there had been a decrease in value because of the additional overlooking from the new development;
 - if there had been a decrease in value, pay the complainants the amount of that decrease; and
 - pay the complainants a further £100 to reflect their time and trouble in pursuing their complaints with the council and with the Ombudsman.

The position of other residents

11. The Ombudsman thought it was possible that other neighbouring residents, apart from the complainants, might have been similarly affected by the maladministration. He invited the

council to consider whether this was the case and, if so, to consider applying the main part of the remedy recommended for the complainants.

(Report 96/B/3950 etc)

H8: Grant of permission

Domestic extension approved – inconsistent reports – applicants' personal circumstances taken into account – objectors denied opportunity to speak at committee meeting

1. Mr and Mrs Parker complained about a council's grant of planning permission for an extension to their neighbour's home which they said was detrimental to their amenities. They also complained that they were unfairly denied an opportunity to speak at a relevant committee meeting.

What happened

2. Their neighbour applied for planning permission for a single storey extension at the rear of his property. The application was refused because the length of the extension exceeded the council's guidelines and the development would have an adverse effect on Mr and Mrs Parker's amenities.
3. Almost a year later the council gave approval to an identical application. The council took into account that the applicant wished to provide the extension for use by two teenage children with severe disabilities who lived in the house.

Personal circumstances

4. The Ombudsman recognised that it was open to the council to approve a planning application, which it would otherwise refuse, because of the personal circumstances of an applicant. But such cases were exceptional and had to be properly considered in that light. In this particular case, the written reports made no reference to the exceptional circumstances that had to apply and contained no guidance as to when an applicant's personal circumstances might override more normal considerations. The Ombudsman considered that the lack of clear written guidance at the appropriate time was maladministration.

Inconsistency

5. There was a significant inconsistency in what the reports on the two applications said about the likely effect of the extension. The report about the first application said that Mr and Mrs Parker's amenities would be reduced to an unacceptable extent. But the reports on the second application, when nothing had

changed, described the likely effect of the application as minimal. That inconsistency was maladministration.

contacted he would have said that longer notice was needed. In the event Mr and Mrs Parker, believing that they would not be allowed to speak, did not attend the committee meeting.

Addressing the committee

6. The council had a system which allowed applicants and objectors to address the planning committee in person provided they applied at least five days in advance. It was agreed that Mr and Mrs Parker could address the planning committee, but when a decision on the second application was deferred they reserved their right to speak until the application came back to the committee for a decision.
7. They were then only given two days' notice of the next meeting when the application was to be considered. They said they rang the planning officer and the chairman and were told that their request to speak was too late. The planning officer and the chairman could not recall such a conversation but the chairman said that if he had been

Conclusion

8. The Ombudsman did not consider that the council's maladministration caused injustice to Mr and Mrs Parker. The Ombudsman accepted that it was the earlier report which was flawed and not the later ones. The Ombudsman accepted that the adverse effects on Mr and Mrs Parker were not such as to be likely to persuade the council against the application. The planning committee was fully informed about the second application and, while it was unfortunate that Mr and Mrs Parker were not able to speak at the meeting, it was unlikely that, had they done so, the committee's decision would have been any different.

(Report 97/C/1250)

H9: Grant of permission

Housing association development near complainants' homes – complaints that decision was influenced by financial considerations

1. Residents of 12 households complained that a council granted planning permission for a housing association development near their homes on financial rather than planning grounds.

sub-committee decided to defer determination until its next meeting so that officers could establish whether there was any possibility of reducing the proposed number of dwellings.

Events

2. When the application was first considered by the sub-committee, the officer's report recommended the granting of permission. The

3. Between the two meetings the proposed development was the subject of an officer's paper to a meeting of leaders of the political groups. That paper drew the attention of the members to a risk that the council would lose substantial investment from

the Housing Corporation if the application was not approved, and appended a letter from the Housing Corporation to that effect.

4. At the next meeting, the sub-committee granted permission. The report before the meeting made no mention of the risk of a loss of Housing Corporation investment.

Relevant and irrelevant considerations

5. The Ombudsman commented:

“Members have frequently to wear a number of ‘hats’ when considering important matters on which they are required to make decisions. In this case, the planning application had to be determined on planning considerations only, even though some members were aware – either from their membership of the housing committee, or because their group leaders had discussed it with them – that Housing Corporation investment in the district and the reputation of the council with the corporation would be adversely affected by refusal of planning permission.”

6. The Ombudsman said that when the planning decision was considered,

these financial issues were irrelevant and had to be excluded from the decision making process. The report to the group leaders overstepped the mark in inviting leaders to persuade sub-committee members to grant planning permission on the basis of the financial arguments. The report sought to undermine the proper basis of the planning decision that members had to make, and that was maladministration.

7. It was clear that one member was influenced by the financial issues and changed his position from opposition to support for the application, entirely or largely on the grounds of this irrelevant consideration. That too was maladministration.

Outcome

8. The Ombudsman accepted that nine of the ten members who voted for approval were not influenced by the financial arguments. In the circumstances the maladministration did not affect the final decision. The complainants, therefore, had not suffered an injustice in consequence of maladministration.

(Report 96/B/4048 etc)

H10: Members’ interests

Allegation of improper influence – procedures for consideration of applications – members’ interests

1. Mr Hinton complained on behalf of his mother that a council did not properly consider an application for planning permission to develop land close to her home. He also complained that a number of members of the council,

who were members of the planning committee, failed to declare an interest; and that the council was improperly influenced by donations to the council by the firm of which the applicant was a director.

The application

2. Mr Garland, the owner of land to the rear of the home of Mrs Hinton, decided he would develop the land for housing and he applied to the council for planning permission. He did this in two phases. First he applied for planning permission to build one bungalow and one detached house on that part of the land furthest from Mrs Hinton. After approval of that application, he made an application to build three further dwellings on the land. This time the development was to take place very much closer to the home of Mrs Hinton. The second application, too, was approved.

Allegation of improper influence

3. The Ombudsman was satisfied that there was no relationship between the applicant Mr Garland and the council which led to his applications for planning permission receiving preferential treatment and being approved when they would, otherwise, have been refused. The allegation that the company for which Mr Garland worked donated an archway to enhance the War Memorial Gardens was found to be without substance. The donation by that company of a metal base for a flagpole in response to an appeal by the mayor was, in the Ombudsman's view, of no significance and had no bearing on the outcome of the planning applications.

Consideration of application

4. The Ombudsman was also satisfied that the decisions by the council to approve the two applications by Mr Garland did not demonstrate any inconsistency of approach by the council. A comparable application to which Mr Hinton referred was considered properly upon its merits

and refused for reasons which did not apply to Mr Garland's applications.

5. The Ombudsman said that the reports on Mr Garland's applications prepared for both meetings of the planning committee were long, detailed and comprehensive. The recommendation on each occasion was that the council should approve the applications by Mr Garland. On each occasion the recommendation was well thought out and defensible. There was no evidence that there were omissions by officers in the way in which consideration was given to the applications. The consultation exercise on each occasion was carried out fairly. The report to the committee accurately summarised the objections.

Members' interests

6. Mr Hinton questioned the involvement of four councillors. In three cases the Ombudsman was satisfied that there were no interests to declare and no breaches of the *National code of local government conduct*. But the Ombudsman was critical of the involvement of another councillor, the then chairman of the planning committee.
7. Some 16 years previously that councillor had been employed by the firm of which Mr Hinton was then a partner and was dismissed in acrimonious circumstances. The councillor should have realised (or made enquiries to establish) that Mr Hinton, the objector, was his former employer. Having established that he was, the councillor should have realised that he had a significant interest and asked himself whether it was clear and substantial. In the Ombudsman's view, a member of the public who was aware of the circumstances would have concluded he might have been influenced by them, and that his interest was indeed

clear and substantial. If he had reached that conclusion, the councillor should then have played no part in the consideration by the council of the planning applications by Mr Garland. The fact that he failed to address the issue was maladministration.

8. The councillor did not speak in favour of the application and did not vote. The Ombudsman was satisfied that his chairmanship of the committee, on this occasion, was consistent with the normal procedures of the council. The councillor did not seek, in any

way, to influence the decision of the committee to approve the application by Mr Garland.

Outcome

9. The Ombudsman was satisfied that the maladministration did not cause Mrs Hinton, as a neighbour materially affected by the development, or her son as an objector on her behalf, any material injustice.

(Report 97/C/4259)

H11: Members' interests

Council member acquainted with developer – member has car from racecourse company in which developer has controlling interest – breach of the *National code of local government conduct*

1. Mr Austin complained, on behalf of his local residents' association, about the way in which a council dealt with a planning application for development of a site near his village and, in particular, that the leader of the council had failed to declare an interest at committee meetings when the proposals were discussed.
2. The Ombudsman concluded that there was no administrative fault in the way the council's officers dealt with the development proposals.

Interest of member

3. But the Ombudsman found that the member concerned did have an interest in the planning application, within the meaning of the *National code of local government conduct*, and that the interest was clear and

substantial. The interest arose because of his acquaintanceship with the developer, Mr Charleston.

4. The member was not a close personal friend of Mr Charleston. But they had known each other for a number of years; and there had been social interactions between them, including invitations from Mr Charleston to the member to attend private functions, including his birthday party. Furthermore, through a racecourse company, which Mr Charleston effectively controlled, the member received a car in which to travel while doing promotional work on behalf of the racecourse. The car was used predominantly for the member's own private motoring.
5. The Ombudsman concluded that the member should have declared an interest and withdrawn from meetings

when the planning application was considered. These breaches of the *Code* amounted to maladministration.

Whether member should be named in report

6. The Ombudsman carefully considered the requirement of Section 30(3A) of the Local Government Act 1974 that, unless the Ombudsman considers it unjust to do so, a member in breach of the *Code* must be named in a report.
7. The Ombudsman had seen no evidence to suggest that the member was acting in bad faith when he attended the meetings concerned. The member had played only a small part

in the decision making process on the planning application. But he should have played no part at all. His responsibilities as council leader made it especially important that he should scrupulously adhere to the spirit and letter of the *Code* when conducting council business. In the light of these factors, the Ombudsman concluded that it was not unjust to name the member in the report.

8. The Ombudsman was satisfied that the maladministration did not lead to injustice to the complainant as the member's attendance at the committee meetings did not influence the outcome of the application.

(Report 96/B/1644)

H12: Members' interests

Use of party whip

1. Mr and Mrs Wye complained that there were failings in the way in which a council considered a planning application for development on land to the rear of their home. In particular, they said that some members failed to declare pecuniary and non-pecuniary interests in the application. The decision, in the complainants' view, led to a development which harmed their amenities by over-developing the neighbouring garden land and thus reducing the value of their home.
2. Officers recommended refusal of the application on various grounds which included: traffic problems caused by the lack of a turning space within the site; loss of amenity to neighbouring properties; adverse effect on the locality, particularly in view of its proximity to a conservation area;

failure to enhance the conservation area; and adverse effect on a tree subject to a tree preservation order. The council, however, granted permission.

Members' interests

3. Mr and Mrs Wye believed there was a close connection between the developer, Mr Sherbourne, and three members of the council, Mr Leam, Mrs Leam and Mrs Firth.
4. During the course of the 18 months or so prior to the council's decision, Mr and Mrs Leam were convicted of a corrupt relationship with Mr Sherbourne, involving inducements of goods and money in respect of support for planning applications.

They received prison sentences as a result. Mr Leam had been a sub-contractor for Mr Sherbourne.

5. It seemed to the Ombudsman that Councillor Leam's business relationship with Mr Sherbourne – in part corrupt and in part contractual – gave him a pecuniary interest in the application by Mr Sherbourne which was the subject of the complaint to the Ombudsman. This was an interest also shared by his wife, Councillor Mrs Leam. The planning application was submitted by a firm of architects known to work for Mr Sherbourne: the timing of the criminal offences persuaded the Ombudsman that Mr Leam must have known that the applicant was Mr Sherbourne.
6. Councillor Leam was chief whip of the majority group of the sub-committee. The group's practice was to invoke party discipline when considering planning permissions. At a majority party group pre-meeting, the members decided to approve the development against officer advice. Councillor Leam was present at the pre-meetings and so was his wife. The group's decision secured a vote for planning permission at the relevant sub-committee meeting. The Ombudsman concluded that it was maladministration for Councillors Leam and Mrs Leam to pursue their personal interest in Mr Sherbourne's planning permission.

Use of party whip

7. The Ombudsman commented:

"The use by the majority group of party discipline to determine planning applications was also maladministration. Members have to decide these matters on facts and material planning considerations. It is inappropriate to establish party policy on whether facts exist and on what weight should be attached to them."

8. The Ombudsman said that party policy was an irrelevant matter, and it was allowed to outweigh material planning considerations. The abuse of party discipline put the whole majority group, and the city's planning system, into the hands of Councillors Leam and Mrs Leam, and Mr Sherbourne.
9. Councillor Mrs Firth had been found not guilty of any corrupt relationship with Mr Sherbourne. She was the chair of the sub-committee which gave Mr Sherbourne the planning permission and she voted for the application. However, the application was not in Mr Sherbourne's name and Councillor Mrs Firth said she did not know that it was made on his behalf. The Ombudsman found no evidence to show that she had grounds which might have led her to consider whether she had any interest to declare.

Outcome

10. The council's maladministration caused Mr and Mrs Wye injustice. On the basis of the council's planning assessment of what should have been permitted on the site, the Ombudsman concluded, on the balance of probabilities, that the development of the houses next to Mr and Mrs Wye's home would not have proceeded without Councillor Leam's intervention. The Ombudsman accepted, however, that some development on the site could properly have been permitted.
11. To remedy the injustice, the council was recommended to commission an independent valuation of Mr and Mrs Wye's home to ascertain whether there had been a reduction in value caused by the construction of the two houses; and, if there had been, to pay the difference in value. The Ombudsman said that, in the assessment of this reduction in value, regard should be had to the permissible development potential of the site at the time.

12. The Ombudsman also recommended that the council should pay Mr and Mrs Wye £250 for their time and trouble in pursuing their complaint with the council and with him.

(Report 95/B/1891)

H13: Members' interests

The National code of local government conduct covers activities outside formal meetings – the handling of a change of officers' recommendations at a meeting

1. Mr Jones complained that a council member, Councillor X, used his position to further the interests of an associate by helping that associate to obtain planning permission for an extension to his house. The extension was adjacent to the boundary of Mr Jones' property, and he said that he suffered loss of privacy and amenity to his home as a result of a planning permission which was wrongly granted.

What happened

2. When the application was made, Mr Jones sent the council an objection to it. The area planning officer visited the site and discussed the application with Mr Jones. The officer prepared a report for the planning committee recommending that planning consent should be refused.
3. The report was read by the applicant, who wrote a letter to the planning committee which was circulated to members. The letter supported his application and criticised the officer's report. The officer's line manager, the development control officer, was telephoned by Councillor X, who asked him to visit the site to check the recommendation made by the area planning officer. The development control officer did so, and decided that he could not support the recommendation.
4. At the meeting of the planning committee, Councillor X declared an interest in the application and left the room. The development control officer made an oral recommendation that the development should be approved and that was accepted.
5. Following a complaint from Mr Jones, the planning committee considered a report from the chief planning officer. The chief planning officer said the normal practice had not been followed and that the appropriate procedure would have been for the committee to be asked either to defer the application for a later report or to visit the site before making a decision. Arguments had been put forward in support of approval of the scheme which were disputed in terms of their material relevance. If a decision had been deferred, the opportunity would have been afforded to assess those arguments before a decision was

reached. The chief planning officer's report said that the haste employed had prejudiced the opportunity for an interested third party to provide further representation about information supplied about the application. The planning committee decided to visit the site and, having done so, resolved that the planning application should have been refused.

6. The council agreed to compensate Mr Jones for any loss of value resulting from the decision to grant permission for the development, as assessed by the district valuer, together with £250 for his time and trouble in pursuing the complaint.

Members' interests

7. The Ombudsman criticised the part played by Councillor X. He had an interest in the planning application arising from his relationship with the applicant. They had previously shared business interests and the applicant had for a time been Councillor X's solicitor. The Ombudsman said that the *Code* makes clear that the principles about the disclosure of interests and withdrawal from participation should be applied, not only to formal meetings, but also to any of a member's dealings with council officers. The Ombudsman found that Councillor X had breached the *Code* and that this was maladministration by the council.
8. The result of Councillor X's intervention was that the development control officer inspected the site and decided to change the recommendation to the planning committee. Although there was not a direct causal link between the councillor's intervention and the committee's decision to grant planning

permission, the Ombudsman did not doubt that the former made the latter more likely. It was the combination of the councillor's intervention, and the officers' subsequent failure to seek a deferral of consideration for a site visit, which led to the decision to grant planning permission. The council recognised that approval should not have been given.

9. The Ombudsman also criticised the involvement of another member, Councillor Y, who had an interest by virtue of a business relationship with the planning applicant which Councillor Y accepted was clear and substantial. At the outset, Councillor Y did not realise that the applicant was someone he knew. However, once he did realise that he knew the applicant, he should have declared an interest and taken no further part in the matter. He did not do so. The Ombudsman particularly commented on Councillor Y's explanation of why he did not withdraw from the site meeting, which he chaired. Councillor Y argued that it was not necessary to declare an interest because the site visit did not involve decision-making. The Ombudsman did not accept that site visits were not covered by the *Code* and found that Councillor Y's involvement in the planning application was maladministration by the council.

Outcome

10. The Ombudsman commended the council's willingness to provide a satisfactory settlement of the complaint, and accepted that its action would redress the injustice to Mr Jones arising from the council's maladministration.

(Report 96/C/4381)

H14: Members' interests

Breaches of the *National code of local government conduct* – failure to act promptly on warning of councillors' link with developer – disregard of advice without adequate reasons – breakdown of member–officer relationships

1. Mr and Mrs Crane complained that a council's decision to approve two planning applications for a large residential development and a retail development, against the recommendations of its officers and despite strong objections from the highway authority, were unreasonable and perverse. They complained that approval of the application for the residential development was made without proper regard to a specific policy in the consultative draft local plan, and in a way which was prejudicial to the local plan preparation process.
2. Mr and Mrs Crane said that, by taking these decisions, the council lost the opportunity to ensure that the highway infrastructure envisaged in the consultative draft local plan was in place prior to the occupation of the houses on the site. They said, as a result, that for the foreseeable future the only vehicular access to the development would be via their road, and that this would be likely to lead to a significant increase in traffic flows to the detriment of their amenity and safety. At the time when she issued her report, the Ombudsman noted that no alternative road to serve the development site had yet been constructed and none was planned for the foreseeable future.

Members' interests

3. A member of the council, Councillor E, had a close connection with Mr X, who was involved with the company making the planning applications. The Ombudsman had previously published a report concluding that there was maladministration in the way a different planning application was determined, because Councillor E had failed to declare an interest resulting from his social connection with Mr X and had participated in the debate and voted on the application. That report explained that Councillor E knew Mr X to be a person who donated money to the local branch of the political party of which Councillor E was then vice-chairman, that at the time he regularly saw Mr X in a local public house, and that he had invited Mr X to at least two parties at his home.
4. Councillor E had a clear and substantial non-pecuniary interest in Mr X's application which he should have declared. In view of the evidence, which had also been accepted by the court in judicial review proceedings, of the extent of Councillor E's contact with Mr X, the Ombudsman could not believe that Councillor E did not know of Mr X's involvement with the company concerned here. The failure to declare an interest and withdraw from participation in consideration of the application was maladministration.
5. The Ombudsman also found that the action of another member, Councillor H, in failing to declare a personal interest and withdraw from participation was maladministration. In the same judicial review proceedings, the court had found that Councillor H's links with Mr X had been sufficiently proven to establish bias in another case. Moreover, the circumstances of Councillor H's appointment as chairman of the committee which dealt with planning matters were that the then leader of the council was pressed by Councillor E to appoint Councillor H, telling him that Councillor H was indebted to Mr X.
6. The Ombudsman also questioned the judgement of the former leader in supporting the appointment of

Councillor H as chair when he believed he was indebted to a local businessman. The former leader was aware of the Ombudsman's previous report and that should have alerted him to the danger of placing in the chair of the development committee a member, with no previous experience of serving on that committee, who he believed to be indebted to a person whose planning application had already been the subject of the report critical of the council.

Failure to act on warning

7. Following the submission of one planning application, a planning officer had written a confidential note to his senior officer expressing concern about the apparent links between Councillor E and Mr X. The senior officer advised him to withdraw the note and returned it. The Ombudsman was critical of the failure to act on the warning given by the planning officer, particularly as the link between Councillor E and Mr X was known as a result of the earlier report. The Ombudsman said that the senior officer should have acted on the planning officer's note and referred the matter to the chief executive as monitoring officer, instead of seeking to suppress it. That was maladministration. If officers had fired a warning shot across Councillor E's bows at that point, much of what subsequently took place might have been avoided.

Consideration of advice

8. The Ombudsman was critical of the way members considered the advice of their professional planning officers. The members showed scant regard for that advice. The members also showed a cavalier disregard for the technical advice and expertise of the county council as highway authority. Members also dismissed the advice on flood protection offered by the then National Rivers Authority, substituting their own

unqualified opinions. The Ombudsman was given no adequate explanation by the members interviewed. The only reason members could give for their rejection of professional and expert advice amounted to "we live here and we know better". The Ombudsman found that the failure to give proper consideration to professional advice was maladministration.

Officer-member relations

9. It was clear to the Ombudsman that relations between planning officers and members deteriorated. Whether or not there was an orchestrated campaign by some members deliberately to undermine the credibility of officers' advice for their own ends the Ombudsman could not say. However, the deterioration in officer-member relations undoubtedly facilitated the taking of decisions with maladministration. The breakdown in officer-member relations was in itself maladministration.

Outcome

10. Because of the decisions taken as a result of maladministration by the council, Mr and Mrs Crane would have to endure the additional traffic generated by over 300 additional houses until such time, if ever, as an alternative road was constructed. The council was recommended to instruct the district valuer to make an independent valuation of Mr and Mrs Crane's property, with and without the effect of the planning permissions, and to reimburse them for any loss of value to their house which had resulted.
11. The Ombudsman also suggested that the council should consider taking the same action in relation to the other houses in the road.

(Report 94/C/3532)