

Section H: Planning

H1: Enforcement

Takeaways – inconsistent application of policy on operating hours

1. Mr Washington was the secretary of a management company comprising the residents of a block of flats. He complained on behalf of the residents that the council had failed to take proper action against two takeaway food premises opposite the flats. He said that, because the council had not enforced planning conditions which restricted opening hours to midnight, the takeaways consistently traded until almost 3 am every morning, causing a nuisance to the local residents.
4. The Ombudsman observed that the council's reluctance to pursue its policy forcefully in some instances, and its decision to allow some takeaways in the area to open until 3 am, were evidence of its inconsistent approach. The Ombudsman said that the council should either apply its policy or revise it. The way it had been operating was not fair to traders or residents, all of whom would have been utterly confused by the council's stance on the opening hours of takeaway food premises.

Complaints

2. It was clear to the Ombudsman that Mr Washington made many complaints to the council about the late closing hours of the takeaways, and that he and other residents had suffered nuisance over a long period from disturbance late at night and from litter. The council's response lacked vigour and was subject to long delays.

The council's policy

3. The council had a policy which provided that premises trading in the inner area of the city and close to residential developments had to close at midnight. It did not seem to the Ombudsman that the council followed this policy effectively in the way it dealt with complaints about these takeaways. And it seemed that the council had not properly considered whether it should review its policy or whether to make these premises exceptions to it. Furthermore, the council acted inconsistently in its approach to takeaways and late night opening in general.

Faults

5. There were errors and delays in the council's attempts to take legal action. For example, injunction proceedings against one trader were authorised by the council. But despite evidence of continued late opening, the injunction was not sought and the reasons for failing to do so were not reported to members.
6. The council did not properly consider other options for dealing with the problem, such as taking action in its capacity as landlord of one of the premises or taking enforcement action.

Outcome

7. As a result of the council's maladministration, the residents experienced four years of avoidable nuisance. The Ombudsman recommended that the council should pay the management company £2,500; should review its policy on the opening hours of takeaway food premises in the city centre; and should then consider how that policy, if revised, affected the position of the premises concerned in the complaint.

(Report 97/B/4507)

H2: Enforcement

Animal sanctuary – section 106 agreement – agreement flawed

1. Mr Alder complained that a council unreasonably failed to take enforcement action for breaches of planning control at an animal sanctuary adjacent to his home. He complained that the site was untidy; that landscaping had not been properly maintained; and that he had to plant along the boundary to try to stop animals from damaging plants in his garden and to screen the view.

Planning application

2. When the council became aware of a change of use at the site, it requested the submission of a planning application. On receipt of the application, the council resolved that it should negotiate an agreement under section 106 of the Town and Country Planning Act 1990 for a management plan to improve the appearance of the site.

Delay

3. There was a long delay between the submission of the planning application and the grant of planning permission. In that time the condition of the site of the animal sanctuary deteriorated but the council took no action. It was more than a year after the resolution to grant permission subject to an agreement that the planning sub-committee instructed officers to negotiate with the owners of the site.
4. Altogether, two-and-a-half years passed between the resolution to negotiate an agreement and the signing of the agreement. The Ombudsman said that was an excessive delay and was maladministration.

The agreement

5. There were then further delays in securing the various schemes from the owners which the section 106 agreement required. The owners also carried out fencing works and built an animal shelter near to the boundary of Mr Alder's property which was not in accordance with the agreement.
6. When the council came to consider what power it had to enforce the agreement, its principal solicitor concluded that the drafting of the agreement was flawed and that enforcement would be difficult if not impossible.
7. The Ombudsman said that to formulate, after such extensive delays, a flawed agreement was further maladministration by the council.

Outcome

8. Mr Alder had been given false assurances and had experienced considerable frustration as a consequence of the council's actions. His efforts to protect his amenity were hampered by the council's failure to put in place a workable agreement that would tidy up the site and remove some animal shelters from his boundary.
9. The Ombudsman recommended the council to pay Mr Alder £750 and to take all reasonable steps to enforce the agreement it had entered into, if that was possible.

(Report 97/B/3738)

H3: Grant of permission

Inadequate committee report – lack of site visit notes – relationship between buildings not adequately considered

1. Mr Scott complained that a council did not deal properly with a planning application for a house on the site adjoining his home.

The development

2. Mr Scott said that he knew the plot would be redeveloped at some time and he had no objection to that. But he felt that the house which was built had an unacceptably adverse effect on his property.
3. The new house was built so that there was only a narrow gap between it and Mr Scott's house. It had a steeply pitched roof with gable ends so that it was much taller than his home. He believed the new house had an unacceptably dominating effect.

Consideration of application

4. The Ombudsman said that the relationship of new development to existing dwellings, including height and proximity, was a material planning consideration and he therefore considered whether the council had given proper attention to this when considering the planning application.
5. The submitted elevations did not show the proposed house in relation to Mr Scott's house. Therefore, other than by visiting the site, it was not possible to make an accurate assessment of the proximity of the dwellings or the difference in height. An unqualified case officer was the only officer to visit. That officer did not record what she saw during her visit or make a note of her consideration of the relationship between the two dwellings. Neither was there any record of whether she discussed the application with a more

experienced officer. Those failings were maladministration.

6. The Ombudsman also said that the report to the committee which determined the application was inadequate. Members were shown the elevational plans and so were aware of the appearance of the proposed house in isolation. The report did not include any detail of how the proposed house fitted into the street scene or of the relationship with the properties on either side. The site plan indicated that the proposed house would be built to one side of the plot, with a narrow gap between it and Mr Scott's house and more space on the opposite boundary where there was an undeveloped plot. The report did not draw attention to this relationship and said only that the plot was large enough to accommodate the proposed house and garage.

7. The Ombudsman said:

"If members are to make a decision on an application they should be aware of the material planning considerations. The way in which the property fitted into the street scene was a material consideration, as was the relationship between the proposed house and adjoining properties."

8. It was a material consideration that the proposed house would be built very close to Mr Scott's house and that it would be significantly taller. Members were not told this in the report. There was no record of what information was given orally at the committee meeting but the paucity of detail on the council's file suggested that members were not given additional information.
9. The Ombudsman said he could not conclude that members were aware of all the relevant planning factors when

they made their decision on the application. The inadequacies in the report to the committee amounted to maladministration.

10. When Mr Scott began to complain about the new house after building began, the responses from the council indicated that the detail of the relationship between the two properties had not been fully appreciated. The council said that the new house was marginally higher than Mr Scott's. But the new house was 9.8 metres high and Mr Scott's house was 7.8 metres high. The Ombudsman said that a 25 per cent difference should not be described as marginal.

Injustice

11. The Ombudsman accepted that it could not be assumed that permission would have been refused if all the relevant facts had been put to members. But it was reasonable

to expect that some consideration would have been given to suggesting to the applicant that the house could be re-sited on the other boundary, thus reducing the dominating effect. Even if the applicant had not agreed and members had approved the application as submitted, at least Mr Scott would have been assured that the decision to grant planning permission had been based on a full consideration of the relevant factors. Instead, he had some grounds for believing that the council did not deal properly with the planning application and that, but for the failures identified, the proposal might have been altered.

12. The Ombudsman recommended that the council should pay Mr Scott £500 in recognition of his understandable dissatisfaction and for his time and trouble in pursuing the complaint.

(Report 98/B/294)

H4: Grant of permission

The need to control the levels at which development is permitted on a sloping site

1. Four residents complained that a council did not properly consider the effects of a proposed development on the amenity of their homes.
2. The complainants lived in a cul-de-sac. The development concerned was for some 200 houses on adjacent land. The development site was sloping.
3. The council gave planning permission for the development subject to conditions. But none of the conditions specified site levels. Cross sections of the proposed development were not provided with the application.
4. When work on the site began the residents became concerned about the level at which foundations of properties were laid. The developer had piled topsoil from the site over

A sloping site

two metres high at the corner nearest to the cul-de-sac. The result was that the properties nearest to the cul-de-sac were built on a promontory which ended abruptly at the boundary of the properties which belonged to the complainants.

5. When the application for planning permission was first considered by the council, the case officer thought there was no requirement for the developer to submit details of levels or cross sections because there was space within the site to grade out the differences of levels. But that was not what happened on the part of the site near the cul-de-sac where the complainants lived. Because the council did not require the developer to submit details of levels, the developer had considerable latitude. The result was an alteration in site levels which had not been envisaged when the plans were approved. If details of levels had been provided the council would have been able to take enforcement action against any alteration which it considered as adversely affecting the amenity of residents.
6. When the residents complained, it was difficult for officers to identify the extent to which the site had been altered, because there was no datum point to which they could refer.

Procedures

7. The council's policy document did not specify when levels and cross sections

should be provided. The need might be obvious in some cases but not in others. In respect of this site the Ombudsman commented:

"Given that the site was clearly identified as being on rising ground and that there was a stated requirement for driveway gradients, I consider that the council should have required a datum point or levels when plans were submitted for such an extensive and sloping site."

8. As a result of this case, the council amended its procedures. These now specify that drawings must be supplied with an application showing cross sections and any proposed alterations to ground levels.

Remedy

9. The council agreed to pay the resident who was most significantly affected £2,400, which represented roughly half the loss of value of his property. The Ombudsman did not expect the council to pay the whole loss of value because, if the council had sought levels, some increase in ground level at that point might have been expected though not to the extent which in fact occurred. The Ombudsman also recommended small payments to the other three residents who were less significantly affected.

(Report 97/C/5050 et al)

H5: Grant of permission

Development proposal involving felling of ancient oak tree – differing evaluations from tree experts – failure to consult the appropriate council officer

1. Mr and Mrs Wood complained on behalf of themselves and 18 other members of a residents' association. They said there was fault in the way a council reached its decision to grant planning permission for the demolition of the old village hall and construction of a new village hall near their homes.
5. In the meantime the developers engaged a consultant to provide an assessment. That assessment contradicted the findings of the parks client officer, so it was forwarded to him by the planning officer for his further comments. The planning officer also asked the developers to commission additional work from a different expert.

What happened

2. The old village hall was situated under the shadow of two large oak trees which were known to be at least 150 years old. Mr and Mrs Wood said that the decisions to permit the felling of one oak tree and not to make a tree preservation order in respect of the other tree were unreasonable and were based on insufficient or inaccurate information about the health of the trees. They said that, because of the council's maladministration, the village lost a magnificent tree which was a particularly attractive feature.
3. The planning application included a proposal that one tree should be felled. The planning officer considered the trees had a very high amenity value. He therefore told the architect for the scheme that an expert assessment of the health of the trees was needed. He also asked the council's parks client officer to inspect the two trees with a view to preparing a tree preservation order. The parks client officer was a qualified horticulturalist who was generally consulted by the council's planning officers when they needed advice on trees.
4. The parks client officer reported that both trees had an estimated safe useful life expectancy of at least 40 years.
6. The developers' architect sent the council the report from the second expert and a further comment from the first expert. The opinions of the two experts differed. The planning officer did not refer these further documents to the parks client officer for comment. He said this was because there was little time before the planning committee's site visit; because the developers' expert was better qualified than the parks client officer; and because he thought he understood the content of the documents himself and therefore did not need his colleague's opinion.
7. The planning officer told committee members that the developers said there was real concern over the condition of one tree. The committee agreed to the felling of that tree and granted planning permission for the proposal. The council did not make a tree preservation order for the other tree.
8. After the first tree was felled, Mr Wood produced a report from an arboricultural consultant who inspected the stump. The consultant said he could find no significant rot in the stump which would class the tree as being dangerous or likely to collapse. The consultant said the tree would have lived for at least a further century.

Expert evidence

9. The Ombudsman commented:

“Councils which are local planning authorities must be prepared to scrutinise any expert evidence presented to them in connection with an application for planning permission. I would not expect every council to be in a position to employ its own arboriculturist in order inter alia to look critically at expert advice on trees. But local planning authorities need to have some arrangements in place whereby their officers know when it is appropriate to seek advice; and they need to have suitably qualified resources to call on for that advice.”

10. The council did have such arrangements in place. But those arrangements were not followed. The reasons given by planning officers for not consulting the council's expert when the final reports were submitted were not sufficient in the Ombudsman's view to justify the decision not to consult him. The failure to consult the council's expert was maladministration.

Outcome

11. The Ombudsman was satisfied that if the council's expert had been consulted he would have made his

concerns known to the planning officers and they in turn would have explained them to the planning committee. The Ombudsman accepted that if that had been done the planning committee might have rejected the application for planning permission. The Ombudsman also accepted, however, that the council might nonetheless have granted permission after considering information about the trees and other factors such as the difficulties of the site. But the residents who complained would never know whether, if the council had properly scrutinised the expert evidence presented to it by the developers, the oak tree might have continued to be a focal point in the village.

12. To remedy that injustice, the council was recommended to identify a suitable site in the village, in consultation with the residents' association, the parish council and the village hall trust, and plant two oak trees there.
13. The Ombudsman also recommended that the council should provide more detailed written guidance to its planning officers about when the parks client officer should be consulted, and when it might be appropriate for external advice to be obtained.

(Report 98/C/3652)

H6: Grant of permission

Consideration of whether a proposed development is 'permitted development' – failure to give accurate description in committee report – defective condition attached to planning permission

1. Residents from four households complained that a council wrongly allowed the installation of a wood chopping plant on land close to their homes. They claimed to have suffered from noise and dust and said the council failed to deal with the nuisance or their complaints about it.

Permitted development

2. The council's case officer took the view that the wood chopping machine was permitted development under the terms of the General Permitted Development Order 1995. The council therefore considered that only the housing which covered part of the machinery needed planning permission. Planning permission for the housing was given with conditions.
3. The Ombudsman recognised that the question of whether the machinery was or was not permitted development was a complex professional judgement to make. The Ombudsman considered whether that judgement was made taking account of all the relevant factors. He concluded that it was not.
4. There were five criteria that the machinery had to satisfy in order to be considered permitted development. Two of the criteria were clearly satisfied: the development was for the purposes of an industrial process and was below 15 metres in height. A third criterion was that the site for the installation was industrial land: after obtaining Counsel's advice, the council was satisfied that this criterion, too, was met.
5. But the Ombudsman was concerned about the consideration of the other

two criteria. One was that the machinery had to replace or add to machinery that was, or had been, on the site. There was no evidence that this was considered at all. The council did not mention machinery for wood chopping in the report on the application or in the correspondence that took place at the time. Facts were needed in order to establish whether the criterion was met. But those facts were not sought in the correspondence with the developers' agent and they were never established or considered. That was maladministration.

6. The machinery also had to satisfy the criterion that it did not materially affect the external appearance of the premises of the undertaking concerned. This was a complex matter involving judgements about whether the premises to be considered were a part or the whole of the site. The criterion called for subtle consideration and probably a legal view. The Ombudsman said there was no evidence of any evaluation at all of these issues.
7. In their report to committee, officers did not accurately describe to members the factors that had to be taken into account in judging whether or not the machinery was permitted development. The failure to give an accurate description was maladministration.
8. The Ombudsman commented:
"Categorising the development as permitted development was a crucial decision. It took out of the hands of the council the ability to stop the machinery being installed, or to condition its installation so as to minimise nuisance to neighbours."

9. The Ombudsman said there was no evidence that two of the criteria were met to the satisfaction of the council at the time. In the absence of proper consideration of all the criteria the council could not have been satisfied that the installation of the machinery was permitted development.
 10. It was clear that many members were worried by the proposal at the time and would have sought to minimise any nuisance from the plant to nearby residents and businesses. If the council had considered a planning application for the whole development (the machinery as well as the housing) the application would probably have been refused or conditioned in such a way that noise and dust nuisance would not have affected neighbours significantly.
 11. The council subsequently found that the wording of a condition to the planning applications about noise was inappropriate and the condition was unenforceable. The Ombudsman said that drawing up a defective condition was maladministration.
- Remedy**
12. The Ombudsman considered that the injustice caused by the maladministration was very substantial. For three households the Ombudsman recommended that the council should:
 - pay each of them £2,500 for loss of amenity over two-and-a-half years and a further £500 for the time and trouble they spent in pursuing their complaints;
 - take all practicable steps to secure the removal of the plant from the site or to secure its operation free from dust and noise nuisance;
 - make further payments to each household at the rate of £1,000 per annum until the plant was removed or made nuisance free; and
 - if action to remove the plant or make it nuisance free proved impracticable, compensate the three households for any diminution in the value of their properties.
 13. For the couple who had already moved house, the Ombudsman recommended a payment at the rate of £1,000 per annum for the relevant period; payment of £250 for their time and trouble in pursuing their complaint; and reimbursement of any reduction in the value of their property which an independent valuation determined.
 14. The Ombudsman observed that other people living locally might well have suffered in similar ways and expressed the hope that the council would remedy any injustice to others on a comparable basis.

(Report 96/B/3085 et al)

H7: Grant of permission

Public open space – children’s playground – failure to advertise – intention to dispose of public open space – delay in securing council control of replacement

1. A parents’ action group complained that a council failed to ensure the provision of a new children’s playground in an area where the previous playground was lost to development. They said that, as a result, there were no recreation facilities for children in the area, and local children were having to play in the street, which had not previously been necessary.
2. The group also complained of delay in the transfer of a piece of land, allocated as replacement open space, from the ownership of the developer to the ownership of the council. It had not, therefore, been possible to use money allocated by the parish council and other money raised by residents themselves to provide play equipment.
3. The council received an application for planning permission for development of an area on the edge of the village. Most of the site was in private ownership but the council owned part of it. That part included a playground with children’s play equipment.
4. The council approved the development of the site, including the existing play area, for residential purposes. As part of the development there would be three acres of public open space. A condition of the approval referred to replacement public open space being laid out and donated to the council prior to the cessation of the use of the existing open space.
5. The residents’ association took this wording to mean that the playground would be replaced and equipped. The council clarified that this was not what was intended but that it would simply be public open space. The council said it did not have the funds to provide equipment at an estimated cost of between £25,000 and £35,000.
6. A parents’ action group was formed and raised money for equipment. The parish council agreed to make a contribution of £10,000.
7. Subsequently the council allowed the developers to take possession of the playground before the council had obtained ownership and control over the new public open space. Four years later, at the time of the Ombudsman’s report, the council had still not taken over ownership. It had not, therefore, been possible for the parish council to take a lease of the land and proceed with the playground project.

What happened

3. The council received an application for planning permission for development of an area on the edge of the village. Most of the site was in private ownership but the council owned part of it. That part included a playground with children’s play equipment.
4. The council approved the development of the site, including the existing play area, for residential purposes. As part of the development there would be three acres of public open space. A condition of the approval referred to replacement public open space being laid out and donated to the council prior to the cessation of the use of the existing open space.
5. The residents’ association took this wording to mean that the playground would be replaced and equipped. The council clarified that this was not what

The Ombudsman’s view

8. The Ombudsman accepted that the council had to form a view about what community benefits it could reasonably negotiate with the developer to provide alongside the new housing. The Ombudsman did not think it was maladministration to grant planning permission with terms and conditions which did not provide for replacement play equipment.
9. The Ombudsman could understand why residents believed that replacement could be taken to mean reinstatement of all that was there before. But the planning permission referred to replacement open space only. The council canvassed opinions and, having heard the views of all parties, decided to accept a scheme with the simple provision of a new public open space. There was no

evidence that the council had promised to provide play equipment to replace that which was lost or to ensure that the developer did so.

10. But the Ombudsman found that the council did not advertise in the local press its intention to dispose of the former playground. The failure to comply with the law on disposal of public open space was maladministration. If there had been a notice residents might have responded and might have learnt at an earlier stage that the terms of the planning permission did not require the provision of play equipment. That would probably have caused an earlier start to the residents' campaign for play equipment.
11. The Ombudsman also criticised the failure of the council to ensure that it gained ownership and control over the

new public open space promptly on loss of the old playground.

12. The council's failure to advertise and its delay in gaining control of the new public open space caused injustice by delaying the efforts of the parish council and the parents to build a playground. It was probable that the local children had been deprived of play equipment for two-and-a-half years longer than necessary.

Remedy

13. The Ombudsman recommended that the council should ensure that there were no further delays in providing the play area and should contribute £10,000 towards the cost of suitable equipment.

(Report 97/C/4397)

H8: Members' interests

Quad bike circuit – adequate consideration – site meetings – informal contacts

1. Miss Ellerton complained on behalf of several local residents that a council did not properly consider an application for a quad bike trekking facility at a farm, and in particular failed to consider the amenity of residents along a road facing the farm. She also complained that, though properly declaring his interest and taking no formal part in proceedings of the council, a council member nevertheless discussed the application with other members and attended site inspections.

The application

2. The application was submitted by a farmer who wished to diversify the use of part of his farmland. It was for a quad bike trek circuit of two miles. The proposed circuit was some 300 metres from the complainants' homes.

Consideration by the council

3. The farmer asked for advice about his application. Officers of the council promptly and thoroughly researched

an activity relatively unknown to them. In view of the distance from nearby properties and the fact that the circuit was not easily seen from these, the officers focused upon the question of noise. There were two site meetings and tests were carried out.

4. The Ombudsman accepted that the tests reassured members of the council that the noise from the quad bikes was virtually inaudible at the houses nearest to the track circuit. The noise was significantly less than, for example, that from passing trains and vehicles upon a nearby road or engaged in agriculture.
5. The application was considered at five meetings of the relevant sub-committee and the planning committee before the final decision was taken at a full council meeting. At each meeting members received full sets of papers, including all the objections made by the complainants. Miss Ellerton was allowed to address members of the planning committee.
6. The Ombudsman accepted that there was no evidence to suggest that the council's consideration of the planning application was inadequate.

Interest of member

7. After taking advice from a relevant officer and his group leader, Councillor X decided to declare an interest and withdrew from the meetings of the sub-committee and council when the application was considered. However, the Ombudsman was critical of Councillor X in two respects.
8. The first was that there were occasions when Councillor X discussed the application with other members outside the formal meetings. Councillor X unwisely indicated that he was in favour of the application and

would have voted in favour of it. The Ombudsman pointed out that, having declared his interest, he should have resisted the temptation to express any view.

9. The Ombudsman also criticised the attendance of Councillor X at the two site meetings. The chairman of the sub-committee suggested that Councillor X was attending not as a member of the council but as a member of the public. If that was so, Councillor X should not have spoken to members of the committee at those meetings. But, in any event, the Ombudsman said that the distinction which the chairman sought to make was untenable and commented:

"A councillor attending a site meeting is always likely to be seen, whether by fellow councillors or members of the public, as being there in his capacity as a councillor. He should not therefore attend."

Outcome

10. The Ombudsman found that Councillor X had breached the *National code of local government conduct* and that this was maladministration.
11. The Ombudsman was satisfied that no injustice arose from that maladministration. The Ombudsman's investigator interviewed the 14 members who voted in favour of the application and it was clear that they were not influenced by anything said to them by Councillor X. They made up their own minds on the basis of the evidence before them and, in particular, they were persuaded that there was little risk of the noise that the objectors feared.

(Report 98/C/4198)

H9: Members' interests

Football ground – failure of member to withdraw from meeting – involvement of member with an interest outside meetings – standing orders of the council incompatible with the *National code of local government conduct*

1. Eight residents complained about events surrounding a planning application for a new football ground in their village. The football ground was behind their back gardens and separated from them by a footpath. They complained that the development would adversely affect their amenities through noise nuisance, light pollution, and traffic congestion, and would reduce the value of their properties.

Grant of permission

2. The Ombudsman did not find any fault in the way the council considered the application. The planning committee had all the relevant information before it, including officers' views and the residents' objections, when it reached its decision to grant permission.

Member's interest

3. One member of the council had a clear and substantial private and personal interest in the affairs of the football club. He was a life member and season ticket holder.
4. The member declared this interest at three meetings of the planning committee when the application was considered. But he did not withdraw from the meetings. That was contrary to the *National code of local government conduct*.
5. The member attended the planning committee's site visit and that, too, was maladministration. He also had informal conversations with other members when he made

representations in support of the planning application from the football club. That was further maladministration.

6. The Ombudsman said the member was wrong in believing that the football club was a voluntary organisation of the kind specified in the *Code* as exempting a member from the need to abstain from speaking and voting on a matter affecting the club. The *Code* referred to being an ordinary member or supporter of a charity, voluntary body or other organisation formed for a public purpose, and not for the personal benefit of the members. The Ombudsman said it was an error to consider that the football club fell into the category of voluntary organisations formed for a public purpose. The football club operated primarily as a social and recreational club for the personal benefit of its members.

Outcome

7. The Ombudsman considered that the maladministration did not cause any injustice to the complainants. The application for the football club ground would still have been approved if the member had not breached the *Code*.
8. The Ombudsman invited the council to consider reviewing its standing orders. The standing orders were incompatible with the *Code* since they allowed for members with a clear and substantial interest to remain in the meeting in some circumstances.

(Report 97/B/4009)

H10: Members' interests

Extension to golf club – council member signed petition supporting proposal – member with clear and substantial interest participated outside committee meetings

1. Mr Fay complained, on his own behalf and on behalf of his neighbours, about the way a council dealt with an application to extend a golf club. The proposal was for the extension of the clubhouse and for doubling the size of the golf course.

biased in favour of the application and could not be trusted to make a fair decision on the application.

5. Mr Fay complained that, as Mr U signed the petition and indicated support, he had an interest in the application which he should have declared under the *National code of local government conduct* and he should not then have participated in the committee decision making.

Granting of permission

2. The council granted planning permission. The Ombudsman did not criticise the way the decision was made. Members of the planning committee were clear that they understood what the issues were, and they were able to explain their reasons for disagreeing with the recommendation of the planning officer that the application should be refused. The members took into account material planning considerations which they believed justified a departure from the local plan. The vote was not close.

6. Mr U had taken advice from the relevant officer. He was advised that signing the petition did not amount to an interest under the *Code*. The Ombudsman saw no reason to disagree with that advice in this case.

7. However, the Ombudsman said that Mr U was unwise to sign the petition and should not have done so. The Ombudsman commented:

"The creation of an impression of bias, and action which amounts to a declarable interest, are two different things. Although I am satisfied that Mr U did not have an interest, I can understand how the objectors came to the view that he did."

Petition

3. The golf club had organised a petition to allow local people to express their views about the application. The petition was submitted to the council. Mr U, who was a member of the council at the time, signed the petition and indicated support for the application. He said that he made no secret of his support for the golf club application and saw signing the petition as merely further public acknowledgement of his support.

A clear and substantial interest

8. Another member, Mr Y, did have a clear and substantial interest in the application. He declared that interest and took no part in the committee meeting.

4. The objectors to the application saw Mr U's actions as evidence that he was

9. However, Mr Y took part in a site visit with committee members. Although

Mr Y did not play a major part in the site visit, the Ombudsman said that he should not have been there at all. Because of his clear and substantial interest he should not have taken any part in the consideration of the application. The site visit was as much a part of the process as a committee meeting.

10. The Ombudsman criticised other actions by Mr Y. He showed a member of the council round the golf club site. He contacted the county council's footpaths officer about a footpath which ran across the application site. And he complained to the chief executive that the planning officer's report to committee about the application was biased.
11. The Ombudsman said that the timing of Mr Y's complaint about the planning officer was ill-judged in the extreme. The timing of his complaint gave the impression that his intention was to

have the recommendation changed. The Ombudsman said it was to the credit of the planning officer that he refused to change the report.

12. The Ombudsman said that only one construction could be put on Mr Y's actions, and that was that he was using his position to promote the golf club application. The Ombudsman found that this was maladministration.

Outcome

13. There was no evidence that Mr Y's actions influenced any members of the planning committee, or that the decision might have been different if there had been no maladministration. The Ombudsman did not find that there was any injustice resulting from the maladministration.

(Report 97/C/4716)

H11: Officers' interests

Listed buildings – committee report inadequate – case officer with personal interest

1. Mr and Mrs Sage complained about the way a council considered a planning application from their neighbour for the construction of a stable block on his land. Their house, and their neighbour's house, were Grade II listed buildings.

Two applications

2. The original application was for the stable block to be situated some

110 metres from the two houses. The planning officer dealing with the application considered that the materials were not appropriate in view of the setting near to the listed buildings, and was also concerned that the block would be an isolated building in the open countryside. He asked for different materials and for the stable block to be repositioned nearer to the houses so as to form a better grouping of the buildings and thereby lessen the impact upon the

countryside. A revised application was submitted showing the stable block some 30 metres from the houses.

3. The planning officer consulted the parish council and the environmental health department on the first application but not on the second. The Ombudsman could not understand why it should be thought that, if their views were relevant on the application for the stables well away from the listed buildings, their views would become irrelevant if the building was closer. The failure to re-consult was maladministration.
4. The Ombudsman said it was also maladministration not to advertise the second application in a local newspaper. Although the council sent a notification about both applications to Mr and Mrs Sage, both notifications were sent to the wrong address and that too was maladministration.

Committee report

5. The planning officer's report to committee did not state that the two houses were listed buildings, or indicate what consideration had been given to the effect that the stable block might have on the appearance and setting of the listed buildings. That omission also was maladministration. As a result, members of the committee determined the application without an appreciation of all relevant material facts.

Officer interest

6. The planning officer handling the application was the director of a waste disposal company. The company occupied a site neighbouring the site where the proposed stable block would stand. The Ombudsman said it was most unwise for the council to allow that officer to handle the planning application. His interest could give rise to the suspicion in the minds of third parties that he might have been influenced by it to secure the re-siting of the block further away from his business. By putting a different planning officer on the case the council could have avoided any such suspicion. The failure to avoid such a conflict of interest was maladministration.

Outcome

7. The Ombudsman could not conclude that the stable block would not have been put in the position it was, even had the second application been properly advertised, properly consulted upon, properly reported to members, and been handled by a different officer. But the Ombudsman did consider that Mr and Mrs Sage had suffered from considerable frustration and anxiety because of the faults in the handling of the second planning application, and they had been put to some time and trouble in pursuing their complaint with the council and with the Ombudsman.
8. In recognition of this injustice the council was recommended to pay Mr and Mrs Sage £500.

(Report 98/B/225)