

Section F: Land

F1: Disposal

The importance of not making unrealistic commitments

1. A Member of Parliament, on behalf of a local action group in his constituency, and a resident of the area, Mr Owen, complained that a council went back on an undertaking not to dispose of land in advance of an inspector's report following a public inquiry into the council's proposed unitary development plan.

What happened

2. The land comprised 10.6 acres and was owned by the council. It had been identified as a site for housing development in development plans since the early 1970s.
3. The proposed development of this and other sites in the area generated opposition. The action group argued that the land should be preserved as a valuable resource for amenity, wildlife and local history. In particular the group and the MP sought to persuade the council not to dispose of the land for development until after local objectors had had an opportunity to state their case through the process of the unitary development plan preparation.
4. The council received an offer for the land. It resolved to defer the sale pending the outcome of a public inquiry on the unitary development plan. Councillors subsequently confirmed at public meetings the intention not to dispose of the land until after the outcome of the inquiry.
5. But before the findings of the inquiry were known, the council resolved to dispose of the site. Terms were subsequently agreed with a developer, and detailed plans were approved.

Analysis

6. The Ombudsman said that, but for the undertaking to suspend its disposal, there was nothing to prevent the council from disposing of the land and subsequently determining any application for its future development.
7. In the event, that is what the council did. The decision to permit residential development to go ahead was consistent with policies for development in the general area and with the fact that there was a long-standing commitment to housing on the site. The council agreed to limit the extent of development to six acres and that demonstrated the council's consideration of the views of local objectors.
8. There was an existing planning permission, and the Ombudsman therefore did not see that the council's decision prejudiced the unitary development plan proposals. However, the council had promised not to sell the land in advance of the result of the public inquiry into the unitary development plan and residents in the area could reasonably expect that the council would stick to that promise. The Ombudsman said:

"The promise was, however, misconceived; there was no planning reason to delay consideration of development proposals and little real prospect that residential development would not go ahead. The commitment made in those circumstances was maladministration. As a result expectations were created which were dashed when a more realistic position was adopted."
9. However, in the course of the unitary development plan process, proposals were put forward which substantially

affected the extent of the development which was finally approved and went some way towards what the objectors sought. The Ombudsman did not see that the promise caused them to waste their time in pointless representations.

10. The Ombudsman concluded:

“The council should recognise the importance of not making unrealistic commitments.”

(Report 95/C/4320 etc)

F2: Disposal

The need to establish acceptable use of a site before offering it for disposal – need to set out significant issues in writing

1. Mr Lancaster complained about the actions of a council in relation to his proposed acquisition of a site owned by the council.

What happened

2. Mr Lancaster needed to relocate his car sales, repair and servicing business. One of the council's valuers asked him and two other traders to consider whether they would like to acquire a site owned by the council and if so, to submit proposals. Mr Lancaster did so. The valuer contacted local ward members and representatives of the local community to consult them about the proposals. Ward members and some residents expressed opposition.
3. Planning permission for Mr Lancaster's proposal was refused but he secured approval on appeal. The council's policy and resources committee then considered his request to purchase the site. Members decided to explore the possibility of residential use for the site and refused Mr Lancaster's application to purchase it.

Use of the site

4. Before the valuer discussed the site with Mr Lancaster and other traders, the planning department had already identified it as suitable for the proposed use. The fact that Mr Lancaster subsequently obtained planning permission for the proposed use on appeal supported the view that the invitation to consider it was not unreasonable. The valuer initially had no reason to suspect that members would feel differently.
5. At that preliminary stage the valuer intended to seek approval in principle from the policy and resources committee to sell part of the site to Mr Lancaster, subject to planning permission for the intended use being subsequently obtained. The Ombudsman said that was a sound approach which became a necessary one, once the valuer became aware of opposition by local councillors and residents. Such opposition meant there was a significant risk that the council might not wish to agree the sale, even if planning permission was obtained. The valuer did not proceed with her

original intention and the Ombudsman said that exposing Mr Lancaster unnecessarily to the risk of the council refusing the sale, given that preparing plans and seeking planning permission was bound to entail time and expense, was maladministration.

"I think it is very unsatisfactory that, having invited Mr Lancaster to consider relocating to the site, the council failed to put in writing the nature of its invitation, how it intended to proceed and what hurdles needed to be overcome before any sale could take place."

Communication

6. The Ombudsman was also critical of the council's communication. When the valuer became aware of the opposition she convened a meeting with Mr Lancaster and another trader to explain the position. Mr Lancaster denied that he was told of the objections and said that he was led to believe that once planning permission had been granted he would be able to purchase the site. The Ombudsman recognised that there was an overall failure in communication and judged the council to be largely responsible for it. She said:

Outcome

7. As a result of the council's maladministration, Mr Lancaster incurred abortive costs and expended time and trouble in pursuing his planning application. The Ombudsman recommended compensation of £1,200.

(Report 94/C/250)