



Section J

# Planning

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# J1: Enforcement

## Procedures not written – multiple failures – poor liaison

Mr Dudley complained that a council failed to take enforcement action against his neighbour, Mr Parker, to prevent unauthorised use of his premises as a car repair and respraying business. He said that, as a result, he suffered disturbance and inconvenience.

### Faults

1. The Ombudsman found that the council was aware that there was a breach of planning control by Mr Parker and that action was necessary. But there were multiple faults by the council.
2. There was no written guidance for officers on the procedure to be followed where a breach of planning control was alleged. Officers aimed to follow what was described as 'office practice'. But even that was not followed.
3. The faults included:
  - a delay of six weeks in providing the legal department with instructions to draft the enforcement notice once authority had been given by the planning committee;
  - failure to monitor the site after that authority had been given;
  - delay in establishing the identity of the owner of Mr Parker's premises;
  - failure to give Mr Dudley an opportunity to provide a witness statement;
  - failure to ask Mr Dudley to maintain diary sheets;

- failure to follow up oral warnings given to Mr Parker with written warnings;
  - inadequate records of conversations between the lead officer and Mr and Mrs Dudley, and with colleagues;
  - no evidence available to support the officer's assertion that Mr and Mrs Dudley were kept informed about the progress of the investigation; and
  - claims by Mr Parker that cars he was working on belonged to him or his family were not checked.
4. The Ombudsman was also concerned by the lack of liaison between the planning department and the environmental health department, as well as their unwillingness to consider running two investigations at the same time (or a joint investigation).

### Outcome

5. It was not certain that the situation for Mr Dudley would have been any different if the council had acted without fault. But it was clear that Mr Dudley had incurred inconvenience, and been put to time and trouble in pursuing the matter. The council agreed to make an *ex gratia* payment of £500 to Mr Dudley, and to review its practices and procedures for investigating planning enforcement complaints.

(Report 00/C/12932)

## J2: Enforcement

### Location error – two councils involved – wrong advice

Mr Sanderson complained about the actions of two councils in respect of a property, Home Farm, which he wished to renovate.

#### What happened

1. Home Farm was a semi-derelict farmhouse situated in the green belt. The site was in the area of council A.
2. Mr Sanderson bought Home Farm with the intention of renovating it to provide a home for himself and his family. The building had seriously deteriorated but he believed that, if a house had existed, residential use was established and the house could be restored without planning permission being needed. He says he knew of other farms in the area in similar condition, which had been renovated without requiring planning permission.
3. After Mr Sanderson started work, an enforcement officer from council A visited and told him to stop work because he needed planning permission and building regulations approval. When the enforcement officer returned to the office, her principal officer decided that the property was in the area of council B. The principal officer did not check computer information against paper systems in circumstances where it was known that computer data could be unreliable, and he overruled the enforcement officer's views about location.
4. So, as instructed, the enforcement officer faxed a map to council B purporting to show the property being restored by Mr Sanderson. In fact, the map showed an entirely different property.
5. Council B's planning case officer did not visit the site or carry out adequate checks and did not refer the matter to that council's enforcement section. The case officer told Mr Sanderson that he did not require planning permission and could start building again. A fortnight later the case officer referred the matter to a building control officer, who then met Mr Sanderson on site with his builder and architect. The building control officer told Mr Sanderson that the site was in the area of council A.
6. Shortly after that, a company owning land nearby pointed out to council A that Home Farm was in fact in the area of council A. Council A then served a planning contravention notice on Mr Sanderson, who ceased building once the site had been secured. He applied for planning permission to council A. Permission was refused on the grounds that, because of the degree to which the property had deteriorated, there was no longer a lawful residential use and there was no reason to overturn the presumption against development in the green belt. Mr Sanderson appealed against that decision, lost, and had to demolish the house.
7. In connection with the appeal, council A sought assistance from council B. Council B's planning case officer, who had dealt with Mr Sanderson, set out a letter for council A describing the position and history as he saw it. The Ombudsman said that the officer was well aware of the significance of his letter in the context of the appeal, but there was hardly a line in the letter which was free from error. The letter included euphemisms, half truths, unchecked facts, inaccurate recollections, careless mistakes and wrong assumptions. The writing of that letter, the Ombudsman said, was gross maladministration.

### Injustice

8. Both councils accepted that serious failures had occurred and that these had led to injustice to Mr Sanderson.
9. The Ombudsman noted that Mr Sanderson had stopped work when told to do so by council A. He only started work again because of the advice given to him by council B.
10. The Ombudsman said that Mr Sanderson, as a lay person, knew little about planning law. Given that other properties that he considered similar to Home Farm had been renovated without planning permission, it was reasonable for him to have assumed that the position was the same for Home Farm. The evidence was that, whenever he was given advice from professionals, he followed it. It was reasonable for him to rely on the advice he was given by officers of council A that the site was in the area of council B; and it was reasonable for him to rely on the advice from council B's planning case officer that he did not need planning permission and could restart work.

11. The maladministration by council B led to abortive building costs, the cost of demolition, and the expenses of the appeal.
12. Mr Sanderson incurred legal costs in pursuing his complaint with both councils and with the Ombudsman. The Ombudsman considered that the matter was sufficiently complex to warrant Mr Sanderson's use of a solicitor and a planning consultant to help him. Those costs were jointly attributable to maladministration by the two councils, as also were the anxiety, distress and frustration for Mr Sanderson and his family.

### Remedy

13. Council A agreed to pay Mr Sanderson £3,359 compensation. Council B agreed to pay £67,327 compensation. The Ombudsman commended both councils for their prompt and positive response.

*(Report 01/C/608 et al)*

## J3: General development order

### Telecommunications mast – time limit under general development order – deadline missed – new procedures

Mr Ainsley complained that a council failed to object to an application for the siting of a mobile phone mast close to his property. As a result, planning permission was granted by default. Mr Ainsley complained that, when the mast was constructed, it would impact on his amenity and be a possible health risk to his children.

#### Legal position

1. A mobile phone operator who wished to construct a telecommunications mast up to 15 metres in height had to apply to the council for prior approval for its siting and design. At the relevant time, the council had 42 days to grant or withhold prior approval. If the council withheld permission the operator had a right of appeal to the Secretary of State. If the council failed to make a decision within 42 days, the operator automatically had permission.

#### What happened

2. Mr Ainsley lived in a house on the edge of a town. His property was bordered by farmland which was situated in the green belt.
3. An agent for a telecommunications company applied to the council for permission to site a 12 metre mast with antennae and a radio equipment cabin on the farmland bordering Mr Ainsley's property. The site proposed was some 200 metres from his house.
4. The council had no specific procedures to ensure that applications for prior approval were determined within the 42-day period.

5. The case officer placed a site notice and visited the site. He formed the view that the application should be refused because the mast would be in a prominent position in the green belt and visually intrusive.
6. Mr Ainsley saw the site notice and wrote to the council to object. The council received a total of 26 letters from local residents.
7. The council did not issue a determination of the application by the deadline date. Two weeks later the council refused permission. But that was too late and the development could proceed.

#### The Ombudsman's view

8. The Ombudsman commented:

*“When the council received this application for prior approval for siting a telecommunications mast the General Development Order establishing the fast track approval procedure was some five years old. Telecommunications masts are almost always contentious developments in the countryside, both for the visual impact they frequently have over a very wide area, and for the fears they generate about risks to health of people living close by. Given this climate, I find it extraordinary that the council had failed to gear itself up to deal with prior approval notifications. It was lamentable that, although this was an application which the council wished to refuse, it failed to notify the operator within the 42 days it had to do so. Its failure here was maladministration.”*

### New procedures

9. As a result of this complaint the council changed its procedures. The procedures were that applications were put in a bright red folder, to distinguish them from all other applications, and the expiry date was displayed on the cover. Case officers were advised to put trigger dates in their diaries or on the computer diary to forewarn them.

### Injustice

10. The Ombudsman recognised that Mr Ainsley could feel a justified sense of outrage at the council's inefficiencies. Mr Ainsley would never know whether the refusal that the council intended would have prevented the erection of the mast.
11. The Ombudsman commented that the developer could have pursued the application to appeal. Such an appeal might have succeeded, particularly in the light of the Government's wish to facilitate this type of development. So the Ombudsman on balance could not conclude that the mast would never have been given approval at the developer's chosen site. But it was likely that the council might have been able to negotiate a location on the site that would have had less impact on Mr Ainsley's amenity.

### Remedy

12. The Ombudsman recommended that:
  - the council should make Mr Ainsley an *ex gratia* payment of £350;
  - if the mast was erected the council should use its best endeavours to screen the mast at its own expense; and
  - in the event of failure to establish screening at the site, the council should pay Mr Ainsley a further £350 to reflect his continuing disappointment caused by the council's failures.

(Report 00/B/18637)

# J4: Grant of permission

## Council's code of practice – records – reasons for decisions

Mr Findon complained about the way a council reached a decision to grant planning permission for an extension to the guest house next door to his home, contrary to the recommendation of planning officers and contrary to the council's development plan.

The Ombudsman found that there were multiple procedural faults in the way the council dealt with the application.

### Code of practice

1. The council had a development control code of practice. The Ombudsman found a number of breaches of the council's code:
  - no reasons were recorded for a member's request for a site visit;
  - at the site visit the members did not always keep together as a group; and
  - there was no minute of the reasons for the decision when the sub-committee made its final decision, which was contrary to officers' advice.

### Records

2. The council could not produce any notes of two site visits. So there was no record of what members saw and there was uncertainty about whether some members were present at the visits.
3. No record was made of a meeting between the planning officer and the applicant and his agent. Nor was the outcome confirmed by letter.
4. Minutes of the sub-committee's meetings were not reported and signed at the next meeting.

### Inaccuracies

5. The decision to grant permission for the extension was wrongly recorded. The

minute incorrectly stated that the decision was in accordance with the officers' recommendation.

6. The location plan attached to the officers' report highlighted the wrong site on four occasions.

### Giving reasons

7. The Ombudsman was particularly concerned about the failure to record the sub-committee's reasons for being minded to, and eventually deciding to, reject the officers' advice on the application for the extension. He commented:

*"Planning applicants and objectors reasonably need to know the reasons for decisions. These reasons will usually be clear from the officers' report where the decision is to accept the officers' advice. But where the decision is contrary to that advice, there will be no proper record of the reasons if the minutes of the meeting do not contain them."*

### Outcome

8. Having considered all the relevant evidence, the Ombudsman concluded on balance that it was probable that permission for the extension would have been given even if there had been no procedural fault in the way the application was considered.
9. But because there was no record of the reasons for the decision, Mr Findon was put to avoidable time and trouble in pursuing his complaint. That amounted to injustice in consequence of maladministration. The Ombudsman recommended that the council should recognise this by making Mr Findon a payment of £250.

(Report 99/A/4401)

# J5: Grant of permission

## Report – policy reference omitted – procedures

Mr Bartram complained about the way a council considered an application for planning permission for development at the property that adjoined his.

### Instability

1. In particular, Mr Bartram was concerned about potential ground instability. He explained that the area had a history of ground instability, his own house had internal cracks, and he knew of others in the vicinity which had shown evidence of cracking or subsidence.

### Report

2. The report prepared by the planning officer made no reference to the council's policy on potential ground instability. The Ombudsman found that this omission was maladministration.
3. But the Ombudsman accepted that the report did provide an adequate summary of Mr Bartram's objections, it said that potential land instability was a material planning consideration, and it referred to advice given by the building control officer. On balance, the Ombudsman concluded that the report was not inadequate or misleading apart from the omission of any express reference to the relevant policy. The Ombudsman was satisfied that that omission alone was not sufficient to flaw the decision of council members at a briefing meeting that the application should be dealt with by officers under delegated powers, or to flaw the decision to grant planning permission.

### Procedures

4. In preparing the report, the planning officer consulted the building control officer. But it was not clear if the building control officer was actually shown Mr Bartram's letter of objection. The Ombudsman said it was unfortunate that there was no contemporaneous record by the building control officer of what documents he was shown, or of his advice.
5. The Ombudsman recommended that the council should consider introducing a requirement that building control officers should put in writing their advice to planning officers.

### Outcome

6. The maladministration, and deficiencies in the council's correspondence with Mr Bartram, meant that he was put to time and trouble in pursuing matters with the council and in bringing the complaint to the Ombudsman. The Ombudsman recommended that the council should recognise this by paying Mr Bartram £250.

*(Report 00/A/9260)*

# J6: Grant of permission

## Notification of neighbour – failure to impose condition – records

Mr Hume complained that a council failed to notify him of a planning application seeking to change the use of premises adjoining his home, and failed to give proper consideration to the effect of the proposed use on his amenities.

### Application

1. The adjoining property was used as a card and gift shop. The application was to use it as a café.
2. Mr Hume was not notified of the application. He said he would have made strong objections, and he believed that his views would have persuaded the planning committee that a café was unacceptable in that location, or that it should not be permitted to open before 8am or on Sundays.

### The Ombudsman's view

3. The council accepted that, due to an administrative failure, the application was not correctly publicised. The Ombudsman found it was maladministration that Mr Hume was denied the opportunity which he should have had to make representations.
4. The council approved the application. Having considered evidence from members and officers involved, the Ombudsman could not conclude that the decision would have been different if Mr Hume's strong objections had been known.

5. However, the Ombudsman said that Mr Hume was left with an understandable sense of outrage that he was denied his right to have his views taken into account. He was also put to avoidable time and trouble in pursuing his complaint.

### Other faults

6. The Ombudsman was also concerned that:
  - the case officer's site notes were not adequate and the date of her visit was not recorded;
  - there was inconsistency in the case officer's report which said that outside 8am to 10pm the café use would be unacceptable, but concluded that the permitted hours should be 6.30am to 10pm; and
  - a condition about refuse disposal requested by the committee was not imposed on the planning permission.

### Remedy

7. The Ombudsman recommended that the council should pay Mr Hume £500.

*(Report 00/B/4874)*

# J7: Grant of permission

## Preapplication advice – records – defective report

Mr and Mrs Poplar complained that a council failed to give appropriate consideration to the impact on their amenity of a planning application for a house uphill from their home and at right angles to their rear garden. They said there was no consideration of the loss of privacy caused by the new house overlooking their garden.

### Outline permission

1. When Mr and Mrs Poplar bought their home, Long House, they knew that there was outline planning permission for a dwelling on the adjacent plot. They were concerned about how the council considered the application for detailed planning permission.

### Preapplication advice

2. The Ombudsman found that there was much that was unsatisfactory about the council's handling of the application for detailed permission.
3. It was clear that a principal planning officer gave advice to the applicant's agent before the submission of the application. That advice followed the submission of a letter and drawings from the agent. Neither the letter nor the drawings could be found on the council's files, and the agent told the Ombudsman that he did not receive a written response to the letter.
4. The principal planning officer accepted that he did advise the agent that the proposals were acceptable. But there was no note of this advice on the council's files, and the officer could not recall exactly what he said, or where or how he said it.

5. The Ombudsman said that the failure to record such a significant event in the planning history was maladministration.

### Committee report

6. The case officer was concerned about the orientation of the house and its design. She discussed her concerns with the applicant's agent and with the principal planning officer. The agent was unwilling to make any changes because he considered that approval was given to the plans prior to submission. The principal planning officer told the case officer that he had made an error in agreeing to the design but that he had to stand by the earlier advice.
7. The report to the planning committee made no mention of the case officer's concerns about orientation and design, including floor levels. The Ombudsman said the report was defective in ignoring these material planning considerations. The failure to report all relevant considerations to members of the committee was maladministration.

### Injustice

8. The Ombudsman noted that the principal planning officer said he had made an error in agreeing to the design; that the case officer was clearly concerned about the overlooking of Long House and the difference in levels between the two properties; and the evidence from the committee chairman that he might have reached a different view if he had known about the overlooking.

9. The Ombudsman concluded that proper consideration by the council would have resulted in permission being refused for the dwelling as proposed, and that permission would have been granted for a house of similar size but oriented to face the village green and not Long House. The outcome was that Mr and Mrs Poplar had to live with a much more intrusive dwelling than should have been the case. They were caused avoidable loss of amenity and distress, and were put to time and trouble in pursuing the matter. And their property could well have been avoidably devalued in the process.

### Remedy

10. The Ombudsman recommended that the council should:

- commission an independent valuation of Long House as it was and as it would have been had the adjacent property been built to face the village green and, if there had been a diminution in value, pay Mr and Mrs Poplar the difference;
- make Mr and Mrs Poplar an *ex gratia* payment of £500; and
- review its procedures to ensure that, as far as possible, similar maladministration did not recur.

*(Report 00/B/5696)*

# J8: Grant of permission

## Defective report – compliance with policy

Mrs Whitby complained on behalf of herself and a number of residents of the same street that a council did not properly consider an application for planning permission to develop a site close to their homes. She said that, as a result, they had houses looking directly into their homes.

### Committee report

1. The Ombudsman found that the planning officer's report prepared for the committee meeting which considered the detailed planning application for the site was deficient.
2. A number of objectors had raised the issue of the development site being higher than their street and the comparative heights of the new houses. None of that was reflected in the officer's report.
3. The Ombudsman said that the failure to include those issues in the report was maladministration.

### Injustice

4. Fourteen of the 16 committee members were interviewed in the Ombudsman's investigation. Six members said their view would have been different if they had been given full information. Six members said they would at least have sought to visit the site before determining the application. A number of members said they would have explored the possibility of an amendment to prevent the loss of amenity for existing residents.
5. The Ombudsman considered that, on the balance of probabilities, if the objections on the basis of the different land levels had been properly explained

and considered there would have been a site visit. That visit would have shown that parts of the council's policy referring to provision of adequate privacy in rooms, gardens and other outdoor areas were not complied with. The Ombudsman considered that some amendment would then have been sought to allow the development to comply with relevant parts of the council's policy, either by reorientating the houses closest to the existing properties or by attaching a condition relating to levelling the land before development could proceed.

6. The council's policy, the Ombudsman said, was not properly applied to the proposal, particularly in respect of privacy in rooms and gardens. The maladministration therefore had resulted in injustice to the complainants.
7. The injustice to the various complainants was difficult to assess because the extent of it was different for each complainant. The Ombudsman recommended that the council should obtain independent advice about the difference in value of each property if the development had been built with the houses set at an angle or a greater distance from the existing properties, compared with the housing as built. The council should then pay each complainant the difference in value if any.
8. In addition, the Ombudsman recommended the council to pay Mrs Whitby £250 in recognition of her time and trouble in pursuing the matter on behalf of herself and her neighbours.

*(Report 99/C/5836)*

## J9: Grant of permission

Application by senior officer – council member with clear and substantial interest – advice to members about declaration of interests – committee report deficient – contravention of policy – use of conditions – poisoned atmosphere

Miss Ash complained that a council did not deal properly with a planning application for an extension to a cottage behind hers.

### Application

1. The application was for a very large extension to a cottage in a village conservation area. The application was made by one of the council's senior officers, Mr Beech. He was one of three executive directors of the council who shared responsibility for managing the council's business.
2. Another of the executive directors was officer L, the head of legal services and monitoring officer. Officer L circulated to council members a memorandum about the declaration of non-pecuniary interests and the *National code of local government conduct*. He referred to two planning applications, this application by Mr Beech and an application from a council member. He suggested that committee members would wish to give consideration as to whether they should declare a non-pecuniary interest.
3. Mr Beech lodged a complaint against officer L. Officer L subsequently resigned his post after disciplinary proceedings against him were started.

### Committee report

4. The Ombudsman found maladministration on a number of points. The first was that the committee report about Mr Beech's application was deficient. It failed to inform the committee of a relevant local plan policy, and failed to tell the committee that the application contravened that policy.

5. The Ombudsman was concerned at the way the responsible planning officer approached the question of whether a particular proposal contravened a policy. The officer's explanation was that, in order to decide whether a proposal breached a policy, it was necessary to consider whether or not the proposal caused harm and then balance that against any other material consideration. The Ombudsman pointed out that sometimes it is possible clearly to say that a policy is contravened. Whether the contravention would cause demonstrable harm and warranted refusal should be a separate consideration. Relevant Government advice supported that approach.

### Members' interests

6. The Ombudsman criticised the involvement of a council member, councillor X, in consideration of the application. That member had a close working relationship with Mr Beech. He was the chairman of the committee overseeing Mr Beech's department. That in itself gave him a not insignificant interest which he should have declared.
7. The Ombudsman said that all the evidence convinced her that, if councillor X had properly applied the test in the code of conduct, he would also have concluded that his interest was clear and substantial. Accordingly, he should have withdrawn from the committee meeting and taken no part in the consideration of Mr Beech's application.
8. In reaching that conclusion, the Ombudsman also took into account the extent to which councillor X and Mr Beech socialised and travelled

together on council business, and the evidence of their continuing contact since Mr Beech left the council's service.

9. The Ombudsman considered that the maladministration was compounded by the fact that councillor X attacked officer L for issuing his memorandum giving advice about the declaration of interests. The Ombudsman considered that the memorandum contained appropriate and relevant advice. If anything, such a memorandum was long overdue.

#### Use of planning conditions

10. The Ombudsman was concerned that the responsible planning officer and the council appeared to be under the impression that a planning condition could not be used to protect a hedge.
11. In this particular case, there was no injustice arising from a failure to impose conditions. But there could be other situations where a condition to protect a hedge would be appropriate. The Ombudsman urged the council to rethink its stance on this particular issue.

#### Conclusion

12. The Ombudsman concluded that if there had been no maladministration, the application would probably still have been approved.
13. The Ombudsman was concerned on a more general point. She commented:

*"I have sadly to report, based on my own and the Commission's officer's experiences in conducting this investigation, that never before have I encountered such feuding and ill-feeling within a council. The impression I received was of a poisoned atmosphere that must adversely affect many loyal councillors and council employees and no doubt has driven/will drive away some good people. This, above everything else I have reported on, I see as the priority for the council to address."*

*(Report 00/C/723)*

# J10: Grant of permission

## Notification of neighbours – inadequate committee report

Eighteen householders living on an estate, and the freeholders' management company, complained about a council's actions in respect of alterations and extensions to a nearby building to change its use to an hotel. They complained that the council did not notify them of the planning application and could not therefore take their views into account; and that it considered an inadequate report on the application before granting planning permission.

### Second application

1. During the Ombudsman's investigation, the council received a second planning application for the same building and approved that second application. The complainants said that:
  - the report on the second application was also inadequate;
  - party whipping inappropriately influenced councillors to grant planning permission;
  - the council wrongly took account of the first planning permission as a material consideration; and
  - the council inappropriately took account of the possible need to pay compensation to the developer if planning permission was refused.

### Basis of investigation

2. The complainants raised similar or identical issues. So it was decided to investigate four sample complaints from householders, and the complaint from the management company. This was on the understanding that a settlement, if appropriate, would be applied to all the original complainants.

### The position of residents

3. The complainants lived on a development of some 100 houses and flats. The planning application concerned a three storey office block which was separated from the estate by a small service area.

### Neighbour notification

4. The council notified 55 local addresses of the first planning application. The council did not notify the residents of this development, even though their estate adjoined the site, and even though it was the council's policy to notify neighbours in such circumstances. The Ombudsman said that was maladministration.
5. The failure deprived the council of the opportunity to take into account the views of neighbours about the impact of the development on their amenity.

### Committee report

6. The Ombudsman said that omission was important because he did not believe the council's planning officers made good that defect by alerting the council to all the relevant planning considerations. There was a fleeting reference in the officers' report to residential development at the rear of the planning application site. But there was no analysis of how residents' amenity might be affected by the new use and greater bulk of the building. There was no reference in the report to the council's criteria for privacy and space between buildings.

7. The failure to report all relevant considerations was also maladministration.

#### Later events

8. The residents of the estate were alarmed by the council's decision to grant planning permission without their knowledge and in circumstances where it was clear that inadequate consideration had been given to their interests. The Ombudsman accepted that it was reasonable and sensible for them to commission planning consultants on their behalf to raise their concerns with the council and to protect their interests in any future developments. This was relevant when the second planning application was submitted to the council.
9. The Ombudsman recognised that, when the council came to consider the second application, it knew that the first decision, although flawed by maladministration, was a material consideration that it had to take into account. Officers carefully advised members of the weight to be given to it, and the other relevant planning considerations were carefully explored.

10. The Ombudsman believed that the second decision was properly made. It had the benefit of residents' objections, forcefully argued by their planning consultants. It took into account all relevant considerations. The council did not view itself as bound by the former tainted decision. And the evidence showed that the decision did not come about as a result of inappropriate use of party discipline.

#### Injustice

11. As a result of the maladministration in relation to the first application, the complainants were caused anxiety and distress and some were put to considerable time and expense in seeking to put things right.

#### Remedy

12. The Ombudsman recommended that the council should pay each of the 18 complainants £200. It should also pay an additional £250 to the four complainants whose complaints were pursued as a sample. In addition, the Ombudsman recommended that the council should reimburse the management company for the cost incurred in hiring planning consultants.

*(Report 99/A/2192 et al)*

# J11: Grant of permission

## Development in countryside – Government guidance – weight given to outline planning permission

Mr and Mrs Appleby complained about how a council dealt with a planning application for development on land next to their property.

They lived in a medieval farmhouse in a rural area. The farmhouse had a modern extension and a workshop. Next to the house was a farmyard owned by Mr and Mrs Beech. Almost abutting the workshop was a large mainly disused barn.

Their complaint was about how the council dealt with a planning application for the conversion of the barn. They said the development approved was contrary to policy and was unreasonably large and intrusive.

### Outline application

1. Mr Beech applied for outline planning permission for the conversion of the barn to an agricultural worker's dwelling and holiday lets. The council's policies permitted a reuse of agricultural buildings only if they were capable of conversion without major or complete reconstruction. Mr Beech's initial plans could be effected only by major reconstruction. On the advice of the council he revised his plans, deleting the holiday units and restricting the application to an agricultural worker's dwelling.
2. The council granted outline planning permission for this, but did not restrict the size of the site to make it commensurate with the dwelling required. As a result, Mr Beech obtained outline planning permission for a substantial site, considerably larger than would have been necessary for a home for himself and his family.

### Full application

3. When Mr Beech came to apply for full planning permission he included in his proposal an agricultural dwelling of five bedrooms, an annex with two bedrooms, and three two bedroom holiday units. When considering that application, the council took the view that the granting of outline planning permission for the large site had made it difficult to resist the larger scale development then proposed. Planning permission was granted.

### Government advice

4. Government advice on development in the countryside set out the principles recommended for new development in the open countryside and the reuse of existing buildings. Criteria for the conversion or reuse for business purposes of existing buildings included requirements that their form, bulk and general design should be in keeping with their surroundings, and that they should be capable of conversion without major or complete reconstruction. For residential use, the guidance recommended that there should be specific justification, for example to enable farm workers to live at or near their place of work. Proposals should fulfil a functional test, to establish that it was essential for the proper function of the enterprise that one or more workers should be readily available at most times. Dwellings should be of a size commensurate with the established functional requirement.

### Amendment of application

5. Mr Beech's original application for the agricultural dwelling and holiday lets

showed the area for which planning permission was being sought as the whole footprint of the original agricultural building. When the description of the application was amended to delete the holiday let units, the area definition was not altered. So, when outline planning permission was granted, this was for the principle of an agricultural dwelling, but on a footprint the size of a large barn.

6. Mr and Mrs Appleby did not object to Mr and Mrs Beech having a family home on the site. But they felt there was a great deal of difference between that and a 13 bedroom accommodation complex. They considered there would be noise disturbance from traffic and from visitors coming and going.
7. It seemed to the Ombudsman that when, on the council's advice, Mr Beech amended his original outline planning application, the council had an opportunity to ensure that the planning permission it granted would be commensurate with the need for an agricultural tied dwelling. If the council's intention was to adhere to the policy it should, in the Ombudsman's view, have negotiated an appropriate size for the development site. Government guidance provided a clear justification for that. The Ombudsman commented:

*"Policies do not have the force of law, and there is nothing to prevent a council making an exception to a policy. But if it intends to do so, it should be clear to officers and members that an exception is being contemplated. In this case, I consider that the council inadvertently granted outline planning permission for a much larger site than necessary."*

8. The Ombudsman considered that the council gave no thought, when considering the outline application, to the size of the development site. That was maladministration.
9. The council argued, with hindsight, that its policies did not reflect the need for tourism uses on agricultural holdings. The Ombudsman commented:

*"While there is, of course, nothing to prevent the council changing its policies to reflect a changing need, it must have regard to its current policies when determining a planning application. And neighbours are entitled to expect that those policies will be observed unless there is good reason to make an exception."*

10. When the full planning application was submitted, that had to be considered on its planning merits. The Ombudsman recognised that the outline permission was a material planning consideration. But he did not believe it was in any way the decisive element which the council allowed it to become. Officers advised the committee that, because a large area of the buildings already benefited from outline planning permission for an agricultural dwelling, it would have been difficult to resist an application for details of a very large house. But the Ombudsman said that since this was a new application for full planning permission, and not for approval of details, this advice failed to convey to members that it was open to them to consider this application from first principles. The maladministration involved in granting outline permission for an excessively large development site was thus imported into the decision-making process for the full planning application.

11. Neither the council's policies nor Government guidance had changed between the outline planning application and the full planning application. The Ombudsman therefore believed that, in ordinary circumstances, the council would have resisted the full planning application but for the fact that it considered its hands were tied. The outline planning permission was allowed decisively to constrain the council, and that was maladministration.

### **Injustice**

12. The injustice to Mr and Mrs Appleby was that their neighbours had planning permission for a house, annex and three holiday units where, but for the maladministration, they should have had planning permission for an agricultural worker's dwelling only.

### **Remedy**

13. The Ombudsman recommended that the council should commission two valuations of Mr and Mrs Appleby's home, one to take account of Mr Beech's existing planning permission, and the other to take account of a notional planning permission for only that element of Mr Beech's approved development which comprised the family home. Any difference in the value identified by the valuer should be paid to Mr and Mrs Appleby as compensation. The council was also recommended to make a payment of £250 to Mr and Mrs Appleby for their time and trouble in pursuing the complaint with the council and with the Ombudsman.

*(Report 99/B/3965)*

# J12: Grant of permission

## Development in open countryside – ‘greenfield’ site – mistaken belief that land was ‘brownfield’

Ms Hudson complained on behalf of the regional branch of a national amenity society which campaigned to protect the countryside. Her complaint was about the way a council handled an application for planning permission for an extension to an industrial estate at the edge of the village in which she lived.

### The site

1. The site comprised some 4.4 hectares of land. It was outside the village boundary and designated open countryside.
2. The council’s planning officers recommended refusal of the application because the proposal was contrary to local planning policies, and because the access roads were substandard.

### What happened

3. The council’s development control committee decided to have a site visit. Following that, the committee resolved that it was minded to approve the application and referred it to the Secretary of State as a proposed departure from the development plan.
4. The Secretary of State did not wish to intervene. The committee held a further meeting to consider the application. It received representations in favour of the proposal from two local companies and representations against the proposal, including a petition from residents of the village and an objection from the amenity society. The committee was told that the planning officers still recommended refusal of the application.
5. At the meeting the leader of the council suggested that the land was ‘brownfield’ (a colloquial term for previously

developed land). The head of planning services told the committee that officers thought it was not brownfield but ‘greenfield’ land.

6. By a majority vote, the committee agreed to approve the application. After the vote the leader of the council asked for clarification to be brought to a future meeting about what was greenfield and what was brownfield land.
7. Ms Hudson then wrote on behalf of the amenity society to register strong opposition to the decision to approve the application. She said the committee’s discussion showed that the council did not understand the key issues. In particular, the decision to approve the application was made on the ground that the committee considered the site to be brownfield, but there was no clarification of the distinction between greenfield and brownfield sites.

### Brownfield or greenfield?

8. The Ombudsman said that whether or not a site was greenfield or brownfield was a matter of fact. It was the job of officers to advise a planning committee, if the question was relevant to a decision on an application, whether or not a particular site was brownfield or greenfield. Officers would need accurate factual information about the site itself, referring as necessary to maps, properly authenticated photographs and records. They would also need to state the definition they were using. From the definition the Ombudsman had seen, she could not see how the site could have been correctly described as ‘previously developed land’ or brownfield.

9. The Ombudsman did not think the committee received clear advice as to whether the site was or was not brownfield. Officers did not produce information and a definition relevant to that question. Members formed a majority view that the site was brownfield. Officers did not express forcefully enough their doubt about that view or offer to obtain verifiable information which would settle the position.
10. The Ombudsman accepted that this was not the only issue relevant to the application. There were legitimate material planning considerations which might have persuaded members to go against the officers' recommendation. But members interviewed in the course of the investigation said that the decisive factor in the decision was their opinion that the site was brownfield.
11. The basis on which members took their decision was flawed and cast doubt on the decision itself. The Ombudsman considered it likely that, if properly advised, the committee would have voted by a majority to refuse the application.
12. The committee gave further consideration to the site some months later following negotiations with the applicants about access and phasing. There was an opportunity then to review whether or not the site was brownfield. But officers left it entirely to the amenity society to raise the issue, despite their own doubts that the site was brownfield. There was no attempt by officers to evaluate the society's evidence or to do their own research into the site's history. The Ombudsman said those were serious omissions.
13. Members interviewed said that, without some lead by officers as to the definition of brownfield or an evaluation of the site status, they felt that at that stage they had no grounds to re-examine the principle of development. The Ombudsman was satisfied that they would have done so if properly guided.

### Outcome

14. The Ombudsman noted that the environmental consequences were serious and permanent. She considered that any remedy should reflect the great disappointment to the amenity society and the significant effect on the countryside resulting from a development which might not have been approved if the council had dealt with the application properly.
15. The Ombudsman recommended that the council should consult with the society to identify an environmental amenity, not already programmed for provision by the council, which would be of benefit to the village. The council should then either provide that amenity or, if a suitable project could not be agreed, pay the society £5,000. The council should also pay Ms Hudson £250 for her time and trouble in pursuing the complaint.

*(Report 00/C/11838)*

# J13: Listed buildings

## Enquiry before purchase – council’s answer incomplete

Mr Smith complained about the way a council answered his search enquiries before he purchased a residential property.

### What happened

1. Mr Smith bought a site in a residential area and obtained planning permission to replace the existing building with 10 flats. He then decided to sell this in order to buy a site across the road which he considered had greater development potential.
2. His solicitor made the usual pre-purchase enquiries of the council. One question asked if there were any planning policies indicating a specific proposal which included the property. In answer, the council referred only to its published parking guidelines.
3. The local plan, however, included a list of buildings considered to be of such local importance that the council would resist demolition or unsympathetic development. A late nineteenth century house on the site was included in that list. But this point was not mentioned in the council’s response to the search enquiries.
4. The council’s solicitor had earlier given advice that it would be appropriate for details of local listings to be disclosed in answer to this particular question on the search.
5. The Ombudsman concluded that the council’s answer to the question was incomplete and therefore wrong, and that this was maladministration.

6. Following the reply to the searches, Mr Smith bought the site. He said that he would not have done so if he had known the true position.

### Injustice

7. Mr Smith said that he lost development profit on the site of some £200,000. The Ombudsman recognised that profits from development are always speculative and might not have been realised to the extent Mr Smith anticipated. Moreover, Mr Smith did obtain some profit from the sale of the site. On balance, the Ombudsman believed that Mr Smith’s abortive costs had been reasonably compensated by the sale of the site.
8. In those circumstances, it seemed to the Ombudsman that the residual injustice for Mr Smith derived from his disappointment, anger and frustration, and the avoidable time and trouble he incurred in pursuing his complaint, resulting from the council’s error.

### Remedy

9. The Ombudsman recommended the council to make Mr Smith an *ex gratia* payment of £1,000.

(Report 00/B/76)

# J14: Validity of permission

## Council advice – advice changed – whether development commenced – lawful development certificate

A property consultancy complained on behalf of Mr Lamb that a council unreasonably and incorrectly told him that he did not have valid planning permission for a development.

### What happened

1. The development concerned was for two bungalows and eight houses. Planning permission was granted in July 1980. Development had to commence within five years, otherwise the permission lapsed.
2. In July 1985 Mr Lamb began work on the footings of one of the dwellings.
3. In 1998 Mr Lamb decided to sell the land. He made enquiries of the council to establish whether the council accepted that development had commenced. The council replied, saying that the building control department had inspected the footings at the relevant time and that, as work had started within five years of the grant of planning permission, the permission was extant.
4. The council's advice was not qualified in any way. In the Ombudsman's view, Mr Lamb was entitled to rely on it. Furthermore, in another letter six months later the council drew attention to conditions requiring the submission of details of materials and landscaping proposals. That letter suggested that appropriate approval should be secured prior to any further development. That letter could reasonably be taken as further confirmation that the council was satisfied, subject to approval of details, that development could proceed. There was no further communication from the council for almost a year after that.
5. But the council then wrote to Mr Lamb's agents with a completely different view. The council said that it had become aware of case law on preconditions and the work

on the footings had taken place before a precondition was satisfied. Therefore the planning consent was invalidated and there was no live planning consent on the site.

6. Meantime Mr Lamb had marketed his property with the benefit of planning permission and obtained a buyer. Because of the council's change of position he nearly lost the purchaser, and there was delay in selling the site. He incurred counsel's fees, solicitor's fees, and agent's fees.
7. The new position taken by the council was arrived at despite the advice of a senior development control officer. Those professional views were not challenged, but despite that the letter was sent. The Ombudsman believed there was inadequate consideration of what evidence the council had to support its view that the preconditions for development had not been complied with. In fact, the development control officer's advice was proved to be correct later when, following an application from Mr Lamb, a lawful development certificate was granted.

### Injustice

8. The Ombudsman said that the council's change of heart was maladministration. The injustice to Mr Lamb was not only the fees he incurred but also the loss of interest on the balance of completion monies, and the fact that he suffered considerable outrage, anxiety and distress.
9. The Ombudsman recommended that the council should pay compensation of £17,692 for Mr Lamb's financial losses, and a further £1,000 to recognise his outrage, anxiety, distress and time and trouble in pursuing the complaint.

*(Report 00/B/226)*