

PLANNING COMMITTEE - 4 SEPTEMBER 2018

OMBUDSMAN DECISION – SOUTH CLIFTON

1.0 Purpose of Report

- 1.1 To update Members on a recent Ombudsman decision and to seek approval for the payment to the complainant of the sum recommended by the ombudsman by way of remedy. The ombudsman's finding was that there had been maladministration and injustice and they recommended the council pay the sum of £700 to the complainant by way of remedy. As this relates to a planning enforcement matter, approval of the ombudsman's recommendation falls within the remit of the Planning Committee. Should the committee reject the ombudsman's findings, the matter would need to be referred to Council for determination. The ombudsman's decision is attached at Appendix 1.

2.0 Background Information

- 2.1 Members will be aware of an ongoing enforcement issue relating to an unauthorised use of a caravan and the running of a business in South Clifton.
- 2.2 The case was first referred to the Ombudsman in May 2015 which resulted in an investigation. The final decision, which the Ombudsman issued in November 2015 is summarised as:
- The council had taken appropriate action.
 - There was some delay that warranted an apology.
 - The council should ensure residents are regularly updated about actions it is considering.
- 2.3 Following on from this, in March 2017, the complainant submitted a further complaint to the Ombudsman stating:
- The council failed to take the agreed action i.e. providing bi-monthly updates to Parish Councils to ensure residents were kept informed of the action the council is taking.
 - The council failed to send a letter of apology to the complainant.
 - The council has failed to take any action in respect of the site and the problems raised previously remain unresolved.

3.0 Information relating to the complaint

- 3.1 The Ombudsman acknowledged that this is a complex case. Since the initial complaint in 2015 the council continued to carry out enforcement of the site which resulted in the council securing a court order for the land to be vacated and the caravan to be removed no later than 1 April 2017. This order was not complied with and the council considered taking direct action. However, in doing so the Council had to balance the planning harm against the housing and welfare needs of the occupiers given that the caravan was their principal home.
- 3.2 During 2017 the case was complicated further in that the owners became bankrupt and the land in question transferred to the Crown to be held in escheat. The council obtained advice from Counsel regarding enforcement objectives and ownership of the land. Counsel

confirmed that the Crown must consent to the council entering land it owned and permission must be sought for the council to take further enforcement action on the land.

- 3.3 Discussions took place with the Crown who advised that it did not propose to take any action that might be constructed as an act of management of the land. It could not give consent but neither was it likely to interfere with action taken by an appropriate body with the appropriate power to act.
- 3.4 Although residential use of the site had ceased, the site still contained commercial items. The council commenced committal procedures for the breach of the injunction. Further investigations identified that the site had been significantly cleared of commercial items. The remaining items were unlikely to justify enforcement action. It is acknowledged that local residents may consider nothing other than the full site being cleared as acceptable.

4.0 Ombudsman Decision

- 4.1 The draft decision which was issued on 3 July 2018 found that there was fault by the council which warrants a remedy. It stated that “there was avoidable delay in pursuing enforcement action about breaches of planning control and that the council failed to meet the recommendations it agreed with the Ombudsman relating to the 2018 complaint.”
- 4.2 The council responded to and challenged the draft decision. It acknowledged a letter of apology had not been sent and accepted that it would immediately action this.
- 4.3 The council advised that it had updated local members, local residents and the parish council as necessary and appropriate. However as regular bi-monthly updates were not made to the parish council, the Ombudsman considered that residents were not kept adequately informed of the action being taken by the council on a longstanding enforcement situation. To find maladministration by reason of the council’s failure to rigidly adhere to bi-monthly updates, even when there is nothing to report is, in the council’s opinion, excessive, especially when the Parish Council had not raised any concerns with the council’s approach.
- 4.4 The Ombudsman suggested by way of remedy that the council pay the complaint £700 which included £200 for the time and trouble the complainant was put to in pursuing their complaint. The council’s initial response was that the sum of £200 was proportionate. However the council challenged the payment of an additional £500. Although the council sympathises with the frustrations of the complaint, given the complexities of the site and matters beyond the council’s control, this payment is not attributable or proportionate to any council action or lack of it.
- 4.5 The Ombudsman was not willing to alter the initial recommendation to award an additional £500 which he considered reflected the frustration and distress the matter had caused to the complainant and further, advised that this was in accordance with their guidance on remedying complaints. This guidance is available here.

<https://www.lgo.org.uk/information-centre/reports/advice-and-guidance/guidance-notes/guidance-on-remedies>

4.6 When deciding on the appropriate level of compensation to be paid to the complainant for their frustration and distress, the Ombudsman took into account the significant delay in getting the case to court between 2015 and 2016 and the impact of the council's failure to address fully the recommendations in his previous report which reduced the complainant's confidence that the matter would be resolved.

4.7 As the Ombudsman decision is one of maladministration and injustice, the acceptance of the findings of the report, including the payment of the recommended sum by way of remedy, has to be approved by the Planning Committee. If the committee do not accept the Ombudsman's findings, the matter will need to be referred to Full Council for a decision. Given the level of the recommended payment, it is considered on balance that this should be accepted and the payment made to the complainant accordingly.

5.0 Equalities Implications

5.1 The purpose of this report is to request that Members accept the Ombudsman's findings and therefore there are no equality implications as a result of the content of this report.

6.0 Finance Comments FIN18-19/2003

6.1 There is currently no budget provision for this payment. Should this payment be made, it would have to be met from the General Fund balance.

7.0 RECOMMENDATION

That Members accept the Ombudsman's finding of maladministration and injustice and approve recommended remedy of payment of £700 to the complainant.

Background Papers

Nil

For further information please contact: Jill Baker on ext. 5810 or Matt Lamb ext.5842

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