

TO: COUNCIL  
12 JULY 2017

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**COMPLAINT AGAINST COUNCIL – OMBUDSMAN DECISION**  
**Monitoring Officer**

**1 PURPOSE OF REPORT**

- 1.1 This report is to appraise the Council of a finding of maladministration with no injustice by the Local Government Ombudsman (“the Ombudsman”) against Bracknell Forest Council in response to a complaint that it gave the complainant “Mr Y” wrong planning advice that led to him starting building work on his new family home before he had planning permission and a self build exemption from the Community Infrastructure Levy (“CIL”)

**2 RECOMMENDATION**

**That the Council;**

- 2.1 **Notes the Ombudsman’s report findings (Appendix A)**
- 2.2 **Agrees that no further action needs to be taken in relation to the matter set out in this report**
- 2.3 **Notes that a copy of this report has been circulated to all members of the Council**
- 2.2 **Approves the draft report of the Council attached hereto as (Appendix B) to comply with the requirements of the Local Government and Housing Act 1989**

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To comply with the provisions of the Local Government and Housing Act 1989

**4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 In view of the fact that the Ombudsman has categorised the complaint as “Upheld: maladministration with no injustice”, the statutory process for reporting the decision must be followed.

**5 SUPPORTING INFORMATION**

The Statutory Framework

- 5.1 The Ombudsman Service was established by the Local Government Act 1974. Any person who feels aggrieved in the delivery of a local authority service which is not covered by other statutory complaint processes may complain to the Ombudsman. The Ombudsman will almost invariably expect the complainant to exhaust the Council’s own complaints process before considering the complaint. If the Ombudsman does decide to investigate a complaint he/she will determine whether,

## Unrestricted

in their opinion, the local authority has been guilty of “maladministration” and if so whether the complainant has sustained “injustice” in consequence.

- 5.2 Section 5 of the Local Government and Housing Act 1989 imposes a duty upon the Monitoring Officer to prepare a report to the Council if at any time it appears to him/her that there has been maladministration in the exercise of its functions. The duty does not arise unless the Ombudsman has conducted an investigation. The report is required to be copied to each Member of the Council.
- 5.3 As soon as practicable after the Council has considered the Monitoring Officer’s report it must prepare a report which specifies:-
- (a) What action (if any) the Council has taken in response to the Monitoring Officer’s report,
  - (b) What action (if any) the Council proposes to take in response to the report, and
  - (c) The reasons for taking the action or for taking no action.

## 6. **Background**

- 6.1 The Ombudsman’s report is self explanatory, but in summary the complainant (“Mr Y”) complained to the Council that Council officers were negligent in giving him wrong Planning advice leading to the imposition of a CIL liability of over £80000. The Council contended that Mr Y built his new home before receiving planning permission and that he was liable to pay CIL in accordance with legal requirements.

### The Decision

- 6.2 The Ombudsman has in relation to the main thrust of the complaint accepted the Council’s position and found its actions proportionate and reasonable and concluded that *“it was not the Council’s responsibility to consider and advise on the detailed application of the CIL rules to the application. I do not find the Council at fault because Officer T’s email did not tell Mr Y the self build exemption needed to be in place before he started work. Indeed, the expectation is that people secure planning permission before starting development.”*
- 6.3 Notwithstanding the broad endorsement of the Council’s actions the Ombudsman has made a finding of maladministration (no injustice) as a consequence of a letter received by Mr Y during an early stage in the process which had indicated that the CIL liability would be calculated by the increase in floor area between the demolished and replacement houses when in fact the floor area of the demolished property could not, in law, be used to offset the final CIL liability. The Ombudsman accepted however that *“this did not affect Mr Y’s position as the old property was already demolished and the construction of the replacement well advanced”*
- 6.4 Given the ombudsman’s endorsement of the Council’s actions throughout the management of this case it is disappointing that once again it has seen fit to make an adverse finding based on advice provided by an officer at an early stage of the process which it accepts had no bearing on the Council’s final decision on the existence and amount of CIL liability.

## **7 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

7.1 The Borough Solicitor is the author of this report.

### Borough Treasurer

7.2 There are no financial implications directly arising from this report.

### Equalities Impact Assessment

7.3 Not required.

### Strategic Risk Management Issues

7.4 None.

## **8 CONSULTATION**

### Principal Groups Consulted

8.1 Chief Executive and Borough Treasurer

### Method of Consultation

8.2 Not applicable.

### Representations Received

8.3 Not applicable.

### Background Papers:

Appendix A - LGO final report dated 30 November 2016

Appendix B- Draft report for Council approval pursuant to S5 Local Government & Housing Act 1989

### Contact for further information

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