

**TO: EXECUTIVE
14 JUNE 2016**

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

1 PURPOSE OF REPORT

- 1.1 This report is to appraise the Executive of a decision by the Local Government Ombudsman (“the Ombudsman”) that there was maladministration by the Council in respect of the accuracy of measurements included in an officer report to the Planning Committee.

2 RECOMMENDATION

That Executive;

- 2.1 Notes the Ombudsman’s findings
- 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
- 2.4 **Approves the draft report of the Executive attached hereto as Annex A**

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, 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, 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 5A of the Local Government and Housing Act 1989 imposes a duty upon the Monitoring Officer to prepare a report to the Executive if at any time it appears to him/her that there has been maladministration in the exercise of Executive 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 Executive has considered the Monitoring Officer's report it must prepare a report which specifies:-

- (a) what action (if any) the Executive has taken in response to the Monitoring Officer's report,
- (b) what action (if any) the Executive proposes to take in response to the report, and
- (c) the reasons for taking the action or for taking no action.

5.4 The Ombudsman served a decision report on the Council dated 21 March 2016. In this draft he concluded:-

"While there was some fault by the Council in the reporting of measurements in the officer report to Committee, there are no grounds which warrant any further investigation of the Complaint by the Ombudsman."

5.5 Nonetheless simply on the finding of fault in relation to the inaccurate measurements on the officer report, the Ombudsman has stated that it will include this complaint in the published figures for the year ending 31 March 2016 under the category of "Upheld: maladministration, no injustice"

6. **Background**

6.1 The background facts leading to the Ombudsman's Decision are set out in Annex B.

6.2 The complainant claimed that the Council had failed to deal properly with his neighbour's planning application to build a replacement dwelling in the green belt, and as a result the development would impact adversely on his amenity. He complained that the Council was biased towards his neighbour; wrongly interpreted Green Belt regulations; and accepted understated dimensions and distance measurements which misled Planning Committee members.

The only element of the complaint upheld by the Ombudsman concerns the disparity between some of the dimensions given in the officer report and those measured from the plans. The Council had previously apologised that the officer report to the Planning committee had wrongly understated the full width and depth of the property at ground floor level, consequently the distance from the development to complainant's house boundary and roof height were also understated. However, this did not detract from the officer recommendation to approve the planning application. During the process a site visit was also undertaken by Members of the Planning Committee and they were very clear as to the approach being taken. The Council had satisfied itself that the dimensions shown on the plans were correct, and therefore enforceable. Furthermore, the Chairman of the Planning Committee had confirmed that the unclear dimensions in the report would not have detracted from members' understanding, in reaching their majority decision to approve the planning application.

Officer reports to Council committees are usually highly accurate, and Planning Officers have been reminded of the need to ensure accuracy in all cases. The

Council regards the fault in measurements in this case as regrettable, though the error was isolated, minor and wholly inconsequential. This has been explicitly accepted by the Ombudsman, who has determined that, *'While there was some limited fault in the reporting of measurements in the officer report, I cannot conclude but for this fault a different outcome would have resulted.'*

- 6.3 Whilst the decision is disappointing, the Council should find comfort in the Ombudsman's findings on how it dealt with the complaint. In particular paragraph 18 states;

"Mr A,s concerns have been seriously considered by the Council and its Chief Executive sought specific legal advice from planning lawyers to query whether anything had happened which would justify the rescinding of the permission. The advice he received was that there was not. The Council also sought the view of the Chair of the Planning Committee who confirmed that in his view had the Committee been presented with the full and correct measurements in the report there was no likelihood it would have decided to refuse the application"

- 6.4 According to the most recent LGO figures (2014-2015) Bracknell Forest Council had the fewest number of complaints to the LGO in comparison with its Berkshire neighbours. Moreover, during that period it was only subject to a single adverse finding by the Local Government Ombudsman. Alongside West Berkshire Council this represented the lowest number in Berkshire. Whilst officers will not allow such data to result in complacency, it is nonetheless indicative of both the Council's robust procedures for dealing with complaints as well as the commitment of officers to ensure that where complaints are presented, they are dealt with expeditiously and with a view to achieving complete resolution.

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 Not applicable.

Method of Consultation

8.2 Not applicable.

Representations Received

8.3 Not applicable.

Background Papers

Correspondence with Ombudsman (exempt)

Contact for further information

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Doc Ref

SP/f/Reports/Executive – 15th December 2015 – Complaint against Emergency Duty Service