

Date of Meeting	31 st August 2006
Title of Report	Ombudsman Report - Enforcement Complaint by Mr Archer
Portfolio	Not Applicable
Link to Corporate Priorities	Corporate Priority No 1 - Customer Focus
Key Decision	NO
Executive Workplan Ref	B293
Public Report	YES

Summary of Report

This report relates to the requirements in an Ombudsman Investigation for the Council to consider the recommendations, review its procedures and inform him of the outcome.

The investigation related to an enforcement complaint and the Ombudsman has found that "maladministration causing injustice" has occurred on three issues:

- I. Inadequate use of specialist Conservation staff and insufficient evidence to demonstrate an assessment of the impact on the Conservation Area.
- II. Inadequate wording of advertisements and planning application descriptions
- III. Uncertainty in communicating decisions.

Recommendations approved by the Monitoring Officer

The Executive is asked to consider the findings and recommended remedy of the Ombudsman, and make its recommendation to Council. The Ombudsman recommends a payment of £500 to the complainant. This payment could be funded through the Planning Services Appeals budget.

To address the issues identified, the Executive are asked to endorse the actions in paragraphs 4.2.2 - 4.4.2 as follows:-

- 1) Continue to consult specialist Conservation/Urban Design Staff on planning applications. Record officer site visits. Record the effects of development in conservation areas on decision notices and delegated/committee reports.**
- 2) Issue instructions to staff to ensure that the description of any applications includes reference to demolition of walls and similar structures.**
- 3) Issue instructions to staff to communicate decisions on enforcement cases to third parties, at the earliest opportunity.**

Other than those implications agreed with the relevant Officers and referred to below, there are no other implications associated with this report.

Financial Implications	Legal Implications	Community & Environmental Implications	Human Resources Implications	Equality & Diversity Implications
YES	NONE	NONE	NONE	NONE

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1. Introduction

- 1.1 This report is to draw the Executive's attention to the Ombudsman's investigation into an enforcement complaint within the District.

2. Options and Options Appraisal

2.1 Option 1:

The Ombudsman expects Authorities to have considered his report within three months and inform him of the proposed actions and whether the compensation payment is agreed. Should the report be endorsed, it is anticipated that the Ombudsman would close the case.

2.2 Option 2:

If the report is not endorsed, it is anticipated that the Ombudsman would re-assess the issues and the actions of the Local Authority

3. Background Information

- 3.1 The Ombudsman's Report is attached at Appendix 1 to this report. The report gives the background to the complaint made and the Ombudsman's view of the factual information, together with his conclusions and findings.

- 3.2 The findings and recommendations of the Ombudsman are shown in Paragraphs 59 - 66 (Pages 10 - 12) of the report.

- 3.3 In terms of the process relating to the Ombudsman's report, the Council is required to:

- 1) Make a press announcement in a local newspaper within two weeks of receiving the report and to make the report available at the Council Offices for a period of three weeks. There is a standard form of notice which draws the public's attention to the existence of the Ombudsman's Report. A notice appeared in the Gazette & Herald and the Swindon Advertiser on the 6th July, 2006.
- 2) Consider the report and tell the Ombudsman within three months of its report, the action that the Council has taken or proposing to take.

4. The Ombudsman's Findings

- 4.1 Following the investigation, the Ombudsman has identified three specific issues, which need addressing as follows:

- 4.2 Input of specialist Conservation Officers and impact of the development on the Conservation Area.

- 4.2.1 At the time of the original planning application in 1996, the Ombudsman considered that there was:

- An informal consultation system with the Conservation Officers
- No evidence that Officers had visited the site
- No evidence that the Council undertook proper consideration of the impact on the Conservation Area.

- 4.2.2 The Ombudsman did recognise that the Council's system, not prompted by this investigation, had changed and now included:
- Consultation with specialist conservation/urban design staff
 - Recording of Officer's site visits
 - Recording of the effects of development in conservation areas on decision notices and delegated/committee reports.

4.3 Wording of Advertisements and the Description of Applications

- 4.3.1 The Ombudsman highlighted that the original application and the subsequent advertisement in the local newspaper did not specifically refer to the demolition of a boundary wall, even though they were referred to in correspondence and shown on the plans. Members of the public may therefore have been denied the opportunity to object to the application.
- 4.3.2 To address this issue, instructions have been sent to relevant staff, to ensure that the description of the application and any subsequent advertisement, includes the demolition of structures, such as walls, particularly in conservation areas.

4.4 Communicating Decisions

- 4.4.1 Whilst the Ombudsman acknowledges that the Council may have decided that it was not expedient to take enforcement action within 24 hours of the complaint, he was critical of the manner in which that decision was communicated to the complainant and the uncertainty that it created.
- 4.4.2 It is obviously important that decisions are communicated to all parties as soon as possible. During the review of the Council's Enforcement system over the past 2 years, letters informing applicants/third parties of the registration/outcome of investigations have been introduced, together with a log of all the actions which have been taken, on any specific issue.
- 4.4.3 Whilst systems are in place to address the issue, instructions have been sent to relevant staff to remind them of the need to ensure that decisions to take no further action on a case are communicated to third parties, at the earliest opportunity.
- 4.5 The Ombudsman considered that the actions described in the preceding paragraphs amounted to "Maladministration Causing Injustice". In the circumstances, he recommended that the Council pay £500 to the complainant and review its procedures on these issues.

5. Financial Implications

- 5.1 The Ombudsman has recommended a one off payment of £500 to the complainant.
- 5.2 Although there is no specific budget for this type of payment, it is recommended that this is paid from the Planning Services' Appeals budget.

6. Risk Analysis

- 6.1 Should the Ombudsman's report be endorsed and the finding accepted by the Council, it is anticipated that the case would be closed. However, if the findings were rejected or significantly modified, it is anticipated that the Ombudsman would re-assess the issues and actions of the Local Authority.

<p>Appendices:</p>	<ul style="list-style-type: none"> • 1 Copy of Ombudsman's Report dated 19.6.06 - Case No 04/B/14163
<p>Background Documents Used in the Preparation of this Report:</p>	<ul style="list-style-type: none"> • Background papers to the Ombudsman Investigation

Previous Decisions Connected with this Report

<p>Report</p>	<p>Committee & Date</p>	<p>Minute Reference</p>
<ul style="list-style-type: none"> • 02/00472 Erection of 3 no. one bed houses with parking 	<p>DC Committee 09/05/02</p>	
<ul style="list-style-type: none"> • 02/00474/CAC Conservation Area Consent for demolition of existing buildings 	<p>DC Committee 09/05/02</p>	