

Report of the Deputy Chief Executive

OMBUDSMAN'S RECOMMENDATIONS - TEMPLE LAKE1. Purpose of report

To seek approval to carry out the Local Government Ombudsman's (LGO) recommendations following her consideration of complaints to the LGO by Mrs Ogden, Mr Watkinson and Mr Vickers regarding the Temple Lake planning applications. This is in accordance with the Council's priorities of listening and responding to provide efficient and effective services.

2. Summary

The LGO has received three complaints regarding the Temple Lake planning applications. Attached at the appendix is a copy of the Ombudsman's synopsis of the complaints, decision and recommendations to the Council. It is recommended that the Council should commission a report from an independent planning expert, to determine the extent of the injustice caused to Mr Vickers with a view to settling his complaint. She has recommended that the planning expert should review the planning file and produce a report detailing what kind of residential dwelling might have been approved if the Council had been aware of Mr Vickers' bungalow. If the report suggests that there would have been a significantly different outcome to the 2003 application and that the impact on Mr Vickers' property would have been reduced, the Ombudsman will ask the Council to settle the complaint by paying compensation, based on the diminution in value of his property, a figure that should be arrived at by the District Valuer.

3. Financial implications/further considerations

If a legitimately claimable diminution in value is found to exist, then its quantification will be very difficult to assess in advance and a further report would need to be presented to the cabinet for consideration. It is not possible to estimate the planning consultant's costs until they have seen the file, but it would be prudent to make a sum of £5,000 available from revenue contingencies to cover these costs. The sum of £29,000 remains in 2010/11 revenue contingencies, subject to other reports on this agenda.

Recommendation

The cabinet is asked to RESOLVE that:

- 1. The Ombudsman's proposals be accepted.**
- 2. A supplementary revenue estimate of £5,000 be approved to cover the cost of the planning consultant with funding to be provided from within the Council's revenue contingencies.**

Background papers

Ombudsman's report

APPENDIX

Temple Lake Planning Applications

The Ombudsman, Mrs Seex has considered these complaints and does not think that it will be necessary to publish a public report. The Ombudsman thinks that, while there is clearly maladministration in the way the Council has dealt with planning matters on the site, there is no real purpose to be served by publishing information that is already in the public domain in the McLaren report.

Mrs Seex does not think that there is any significant injustice to Mrs Ogden or Mr and Mrs Watkinson, but she thinks that the Council should take action towards a settlement of the complaint from Mr Vickers.

Mr Vickers' complaint is:

That in 2003 the LPA gave planning permission for a large detached dwelling, which was too large and too close to his bungalow. Because of administrative errors, which are detailed in the McLaren report, the LPA failed to take account of policies in the local plan and national guidance relating to loss of amenity and privacy.

The complainant also says that the LPA has failed to enforce planning conditions imposed by the Planning Inspector in his decision of 2006.

The 2003 application was approved, but what was subsequently built did not in accordance with plans. The McLaren Report advised the Council that it could not overturn the 2003 application, and highlighted a number of errors. The Inspector agreed that what was built did not accord exactly with the approval, but felt that what was proposed in 2006 would, subject to modifications, be more acceptable than the 2003 'fall back' position.

Mr McLaren said that the decision was flawed because:

- The LPA failed to notify the occupants of the bungalow;
- The Case Officer did not realise that the bungalow existed because:
 - he failed to carry out an adequate site visit;
 - he failed to read to the file for a 2002 application which did refer to the bungalow or failed to take account of the bungalow if he did read that file;
 - the bungalow was not shown on either the OS map or the plans provided by the applicant.
 - the LPA did not have an adequate system for recording site visit notes and notes from a visit by an earlier Case Officer were not on the planning file.
- The Planning Manager failed to invite the Development Control Committee to adjourn when he realised on the day of the DC meeting that the bungalow existed.
- A number of the maps used to identify the location of the green belt were incorrect and inconsistent with each other, though Mr McLaren agreed that the development

was actually built outside green belt, though adjacent to it and within a conservation area.

- That the Case Officer's report failed to give adequate weight to the recommendation of the County Council Conservation Officer.
- The Council's published guidelines on minor amendments were not brought to the attention of Planning Officers nor implemented in this case (though fortunately, the most significant amendments relating to dormer windows were not built).

Before the complainants came to the Ombudsman with their complaints, the McLaren report had been published and put into the public domain. The Council had accepted its findings and made changes to its services.

Because of these errors, a large building has been built very close to Mr Vickers' boundary and habitable windows in his home. Most commentators appear to accept that, as a building existed on the site, it was always likely that there would be some development. However, the original building, a nursing home, was further from the boundary, smaller and less intrusive than that which has been built.

As can be seen from the Planning Inspectorate's report the LPA clearly intended to try and undo the damage done by the 2003 approval, but found that it could not. Eventually the 2006 approval was accepted with conditions that ameliorated to some extent the impact on the bungalow – the main difference is that all windows on the first floor of the main building are now obscure glazed.

It is impossible now to say with absolute certainty what would have happened if Mr Vickers' amenity had been properly considered, but it does seem likely that the 2003 application would have been refused. The Ombudsman would like the Council to commission a report from an independent planning expert so that she might determine the extent of the injustice caused to Mr Vickers with a view to settling his complaint.

Mrs Seex is aware that before he made his complaint to her, Mr Vickers instructed a solicitor to act for him to claim damages from the Council. As it would have been open to Mr Vickers to bring his complaint to her attention much sooner, the Ombudsman does not intend to recommend any compensation other than any diminution in value to his property in line with the local settlement suggestion I will set out below.

"To settle this complaint the Ombudsman would like the Council to commission a report from a planning expert. This person should review the planning file and produce a report detailing what kind of residential dwelling might have been approved if Mr Vickers' bungalow had been taken into account.

The report should give a clear indication on what would have been acceptable in planning terms, detailing the size, location and shape of such a dwelling and any conditions that might have been necessary to protect neighbouring amenity. The report should also indicate whether there are any current breaches of planning control that might require enforcement action by the LPA.

The planning expert should:

- Be independent of the Council and the complainants. The Council should compile a list of at least three named experts, companies or partnerships, showing brief details of qualifications and experience. The Ombudsman will choose one name from this list.
- Take account of all relevant information on the planning file, including comments from all consultees and local residents.
- Carry out a site visit and be provided with copies of the McLaren report and the Planning Inspector's decisions.
- In so far as the report's recommendations on what should have been approved, take account of the policies and guidance relevant at the time the 2003 application was decided.
- In so far as any current breaches of planning controls, particularly as they relate to conditions recommended by the Planning Inspector, take account of current policy and guidance.

If the expert's report suggests that there would have been a significantly different outcome to the 2003 application and that the impact on Mr Vickers would have been reduced, we will ask the Council to settle the complaint by paying compensation. To arrive at a figure for this compensation, we would ask the Council to get the District Valuer to assess any diminution in the value of the complainants' property by comparing what the planning expert says would have been acceptable against what has been built."