

Report to: District Council of Easington
Date: 5 February 2009
Report of: Executive Member for Regeneration
Subject Ombudsman Report on a Planning issue
Ward: All

Purpose of Report

- 1.1 To advise the Council on the outcome of a complaint to the Ombudsman on a Planning issue.

Consultation

- 2.1 Management Team have been consulted on the contents of this report.

Background

- 3.1 A complaint was made to the Ombudsman last year. The complaint was made by the occupant of a former farmhouse, living adjacent to a number of barns that were being converted to residential use. The complaint related to three issues :-

- The development had turned into a new build scheme rather than a conversion;
- A new access road intended to meet some of the complainants concerns about construction and other traffic for the scheme was not being used;
- The construction work may have damaged the complainant's drains.

- 3.2 After a full investigation including interviews with key officers, the Ombudsman issued a report on 12 December 2008. The Ombudsman concluded that the Council acted with maladministration causing injustice, in :-

- its decision to accept extensive demolition of the barns and new buildings without requiring a new planning application which it would have dealt with in accordance with its policies;
- failing to effectively implement its intention to prevent traffic from using the original access and passing close to the complainants home.

The Ombudsman concluded that the Council did not act with maladministration in the way it dealt with the drainage and sewerage issues.

- 3.3 In recommending a remedy to the complaint, the Ombudsman recognises that the Council has sought to resolve the issue of the access road by making a new, further planning permission subject to a legal agreement, restricting the use of the original access road. The Ombudsman concluded that this is a satisfactory attempt to remedy the injustice of the disturbance caused by the maladministration. The principal cause of the disturbance to the complainant being the developers decision, on occasion, to ignore the new alternative access and use his existing rights over the original access.

- 3.4 The Ombudsman therefore recommends that the Council should :
- send a copy of the completed legal agreement to the Ombudsman as part of its response to the report
 - pay the complainant £500 in recognition of the time and trouble in pursuing the complaint;

- produce guidance and train officers to assess technical documents such as the consultant's report on the structure of the barns that was submitted with the planning application.

A copy of the Ombudsman's report is attached as Appendix 1. A notice was also published in two local newspapers on 22 December to accord with Section 30 of the Local Government Act 1974.

Conclusions and recommendations

- 4.1 Barn conversions present difficult challenges for the planning process because practical structural problems often emerge as old agricultural structures are transformed into modern living accommodation. Consequently, Planning Authorities have often adopted the practice of allowing 'working amendments' to resolve some of these structural issues. However, whilst the practice has been widespread and longstanding, the practice has never been clearly established in law.
- 4.2 On this occasion, it is clear that the amount of demolition that was sanctioned on site was clearly beyond the point at which a new planning application should have been required. Unfortunately, once the demolition works were permitted, it was not possible to regularise the situation. The Head of Service and Principal Development Control Officer therefore maintained a close involvement in the development to ensure that no further issues arose during the build out.
- 4.3 During development, it also emerged that a new access road, required by planning condition and built as part of the development, was not always being used and that the developer was, on occasions, using pre-existing private access rights to the older access road which passed the complainant's house. The private rights were not known at the time the application was approved and the use of the road by construction traffic caused disturbance and distress to the complainant. This matter is in the process of being resolved as explained in paragraph 3.3, above.
- 4.4 The Ombudsman's findings and recommendations are therefore accepted. The planning service has continued to work with the applicant and the complainant to resolve the outstanding issues on site and a number of procedural changes have been introduced as a result of the case and in response to the Ombudsman's findings. These changes will help to ensure that the problem does not reoccur :-
 - The relevant policies in the District plan have now lapsed, and national Planning Policy Statements provide a sterner test for those wishing to convert barns. The Planning Policy team have provided written guidance for Development Control case officers.
 - Case officers now require applicants to demonstrate how structures can be converted where previously it was only necessary to demonstrate if a structure was capable of conversion. This provides a mechanism for greater control over the development.
 - The 2008 Planning Act provides greater clarity in defining the scope of planning authorities to allow working amendments, post planning approval.
 - Officers are expected to make contemporaneous notes to evidence the decision making process and to record advice to applicants.

Further training will be undertaken to ensure that these revised procedures are properly embedded in working practices and that the drafting of bespoke planning

conditions achieve the outcomes that are intended. These initiatives will be evidenced in the Council's response to the Ombudsman.

5.0 Implications

- 5.1 Financial : Payment of £500 to the complainant in recognition of the time and trouble taken in pursuing the complaint.
- 5.2 Legal : There are no legal implications
- 5.3 Policy : Policy changes have updated the Council's approach to barn conversions.
- 5.4 Local Government Review : There are no direct implications, but the Ombudsmans findings will help to inform common procedures for the new Council.
- 5.5 Risk : The proposed remedy is dependant upon a legal agreement which has yet to be finalised.
- 5.6 Communications : A notice has been published in two local newspapers and a press release issued. The complainant will be formally informed of the Councils response to the Ombudsmans report.

6.0 Recommendation

- 6.1 It is recommended that the Council :-
 - i) accept the Ombudsmans report, conclusions and recommendations
 - ii) pay the complainant £500 in recognition of the time and trouble taken in pursuing the complaint
 - iii) send a copy of the completed legal agreements to the Ombudsman
 - iv) develops the actions outlined in paragraph 4.4 to ensure that better procedures are in place to determine and control barn conversions, and to process planning applications in general.

Background Papers/Documents referred to

Local Government Ombudsman report