

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL**

**Standards Committee**

**19 November 2021**

<b>TITLE:</b>	<b>Local Government Ombudsman Annual Letter</b>
<b>PORTFOLIO HOLDER:</b>	<b>Councillor Ralphs - Council Leader SMDC</b>
<b>CONTACT OFFICER:</b>	<b>Karen Lomas - Head of Customer Services</b>
<b>WARDS INVOLVED:</b>	<b>Non-Specific</b>

**Appendices Attached – Local Government and Social Care Ombudsman Annual Review Letter**

**1. Reason for the Report**

1.1 To advise members of the content of the Ombudsman's Annual Letter for the period April 2020 – March 2021

**2. Recommendation**

2.1 That members note the content of the Ombudsman's Annual Letter (included at Appendix A)

**3. Executive Summary**

3.1 The Local Government Ombudsman's Annual Review Letter summarises complaints and enquiries received over the previous year in relation to the Council. The letters are published on the Ombudsman's web site together with specimen data used to inform the Ombudsman's Annual Report

3.2 In 2020/21 the Ombudsman received 5 new enquiries or complaints related to the Council, compared with 5 in the previous year. Details of the decisions made and investigated complaints in 2020/21 are summarised as follows-

Service Area	Complaint	Ombudsman's Detailed Finding
<b>Upheld (0)</b>		
<b>Not upheld (0)</b>		
<b>Closed after initial enquiries (5)</b>		
Planning	<p>Mr X lives next to a property where the owner has installed a platform and summerhouse in their garden, 1.6m from the boundary with Mr X's property. Mr X reported the matter to the Council. Officers determined the structure was not compliant with General Permitted Development Rights (GPDR), but decided not to take enforcement action.</p> <p>Mr X complained that the Council:</p> <p>failed to take enforcement action against the neighbour; and</p> <p>failed to take into account his concerns about the development.</p> <p>Mr X says his dining room and garden are overlooked by users of the summerhouse and light shines from its windows towards his property. He has concerns about noise from next door and about the impact of the structure when he comes to sell his house. Mr X says he and his family have been caused distress and stress by the matter. He is upset the Council ignored his concerns.</p> <p>Mr X wants an independent person to measure the development again. He wants an increase in the height of the neighbour's fence to stop the overlooking, reduce noise, and block light from the summerhouse.</p>	<p>Local Planning Authorities (LPAs) such as this Council may take enforcement action where there has been a breach of planning control. Enforcement action is discretionary. Section 171A of the Town and Country Planning Act 1990 ('the Act') says a breach of planning control is:</p> <p>the carrying out of development without the required planning permission; or</p> <p>failing to comply with any condition or limitation subject to which planning permission has been granted.</p> <p>LPAs may serve an Enforcement Notice under section 172 of the Act where the breach involves carrying out development without permission, if it is expedient to do so. It is for the LPA to decide whether it is expedient to take action. An Enforcement Notice creates a right of appeal to the Planning Inspectorate for the person served with the Notice.</p> <p>The LPA may invite a retrospective application to regularise development which has already been undertaken. Such an application must be considered in the normal way.</p> <p>We cannot criticise an LPA's enforcement decision unless there is evidence of fault in the process officers followed to make that decision which, but for that fault, they would have made a different decision.</p> <p>On receiving Mr X's report about his neighbour's development, an officer visited the site and determined, due to the height and location of the summerhouse and its platform, the neighbour could not rely on the structure complying with GPDR. Officers sought</p>

mitigation measures for the overlooking and loss of privacy. They asked the neighbour to install opaque film on the two windows most likely to allow overlooking from the summerhouse, and the neighbour did this. The Council also invited the neighbour to submit a retrospective planning application. The neighbour did not make an application, so it fell to officers to decide whether to use their discretionary enforcement powers.

Officers produced an 'Expediency Report', signed off by the senior officer, confirming that it was not expedient to enforce. The Council agreed with Mr X that the neighbour's development breached planning control. But a property being built without permission and subsequently unregularised is not in itself sufficient grounds for a council to enforce. Officers needed to determine if the structure as now built had been the subject of a planning application, whether it would have been granted permission. Officers decided it would, so it was not expedient for them to enforce.

In reaching their decision, officers considered comments and photographs submitted by Mr X. While the Council did not make the decision Mr X wanted, the information I have seen shows officers took account of Mr X's evidence and concerns when reaching that decision. I realise Mr X disagrees with their decision. But it is not itself fault for a council to properly make a decision with which someone disagrees.

The Council reached its professional judgement decision not to use its discretionary enforcement powers to enforce against Mr X's neighbour after following the proper process. I do not consider there are grounds for us to go behind the officers' enforcement decision here. There is not enough evidence of fault in the way officers followed and applied the appropriate processes to make their professional judgement decision not to use their discretionary enforcement powers.

		<p>Mr X notes that the plastic film the neighbour has put on one of the summerhouse windows overlooking his patio windows and garden could easily be removed. If the neighbour were to change the summerhouse by, for example, removing that obscuring film, Mr X may wish to report this to the Council. If the neighbour refused to replace the film, it would be for the Council to decide whether it means they should enforce, because its earlier decision not to enforce was in part based on the presence of the film. That would be a matter for officers to determine, to make a new decision, should this situation arise in the future.</p> <p>I note Mr X is concerned about excessive noise and light spillage caused by the neighbour using the summerhouse. Should those issues arise, they would be matters for Environmental Health officers. On receipt of any reports, they would need to determine whether the frequency, level and duration of any claimed disturbances were causing a statutory nuisance to Mr X. That would be a decision for those officers to make.</p> <p><b>LGO Summary</b> - We will not investigate Mr X's complaint about the Council's decision not to take enforcement action against his neighbour's summerhouse and platform. There is not enough evidence of fault by the Council in the process it followed to consider and make its discretionary decision on the matter to warrant our investigation.</p>
<p>Councillor Conduct and Standards</p>	<p>The complainant, who I refer to as Mr X, complains about the Council's response to his complaint about a councillor who he says has misled the public and the police about the status of a footpath by Mr X's property. He says this has been very stressful and he wants the councillor to stop giving out false information.</p>	<p>Mr X complained to the Council about the actions of a neighbour, who is also a councillor. His complaint concerned information the councillor was presenting about the status of a footpath by Mr X's property.</p> <p>Mr X maintains the footpath cannot be used by vehicles but he says the councillor told the police and members of the public that vehicles could use the path and that it was a byway.</p> <p>In accordance with normal procedures,</p>

		<p>the Council's Monitoring Officer discussed the Code of Conduct complaint Mr X made about the councillor with the Independent Person. Having done so, the Monitoring Officer wrote to Mr X to explain that the Code only applies to councillors acting in their official capacity as a councillor and that as the councillor was not acting in his official capacity the Council did not consider the complaint Mr X had made could amount to a breach of the Code. It told Mr X it would take no further action.</p> <p>Dissatisfied with the Council's response, Mr X complained to us.</p> <p><b>LGO Summary:</b> Mr X complains about the Council's response to his complaint about the actions of a councillor. We will not investigate the complaint because we are unlikely to find evidence of fault in the way the Council considered the complaint.</p>
<p>Councillor Conduct and Standards</p>	<p>The complainant, who I shall refer to as Mr X, complains the Council refuses to investigate his complaint that a councillor breached the Code of Conduct.</p>	<p>Mr X complained to the Council that a councillor had sent information to the Planning Inspector which was not true. He said the councillor was trying to discredit his integrity and that of third parties. He also said the councillor was attempting to influence the outcome of a planning appeal by lying to the Planning Inspector. Mr X believes this to be a breach of the code of conduct.</p> <p>The Deputy Monitoring Officer wrote to Mr X. He confirmed he had considered the complaint with the Council's Independent Person. The Deputy Monitoring Officer confirmed they had also considered all the correspondence Mr X provided and the background to the complaint, including the Councillor's letter to the Planning Inspector.</p> <p>The Deputy Monitoring Officer confirmed that having considered all the information, he, and the Independent Person had not found a breach of the code of conduct which merited further</p>

		<p>action.</p> <p><b>LGO Summary</b> - We will not investigate this complaint about the Council's decision not to investigate a complaint that a councillor had breached the Code of Conduct. We have not seen evidence of fault in the way the Council considered the complaint.</p>
Assets	<p>Mrs X complains the Council has denied ownership of a piece of land where she fell. Mrs X seeks compensation for injuries she sustained but does not know who owns the land.</p>	<p>Mrs X fell on an uneven piece of land and sustained injuries for which Mrs X seeks compensation. Mrs X says she has been told the Council owns the land but complains it has told her it does not.</p> <p>The Council has sent Mrs X a land registry plan which it says shows the land is not Council land and is unregistered. It has provided information about tracing owners of unregistered land and suggested Mrs X might seek legal advice.</p> <p><b>LGO Summary</b> -Mrs X complains the Council has denied ownership of a piece of land where she fell. We will not investigate as it is unlikely we will find fault by the Council or that we can add to what it has already said.</p>
Planning	<p>Mrs X complains that the Council failed to follow due planning process in the determination of her neighbour's planning application by not consulting on the final accepted development plans.</p> <p>Mrs X says the Council's errors mean she lost her opportunity to object to the accepted plans, to refer the plans to her elected Councillor, or try to have them considered by the planning committee. She says the development will negatively impact on her property's value, and its amenity by overshadowing it and being overbearing. Mrs X says the matter has left her disillusioned with the planning process and has caused her upset and anxiety.</p> <p>Mrs X says that ideally, she wants the Council to withdraw the planning permission, and to reconsider it properly, in line with due process, involving all interested parties. She</p>	<p>Mrs X lives next door to a property which was the subject of a planning application. The applicant sought to extend the rear, side and front of the property. During the consultation period, Mrs X objected to the original application plans because she considered the rear and side extensions would have unacceptable impact on her property's amenity, being overbearing and causing loss of light.</p> <p>The applicant submitted amended development plans before the Council decided the application. The Council used those second plans to determine the application, without further public consultation.</p> <p>Council consultation on amended plans is discretionary. Where a planning application is amended, it is up to a council to decide whether further publicity</p>

also wants:

1. the Council officers responsible for the errors to be held to account;
2. the Council to revise its current planning process to be more democratic;
3. compensation for her upset and anxiety.

and consultation is needed, in the interests of fairness. The decision not to reconsult was a discretionary one officers were entitled to take here. Mrs X says she recognises the Council had discretion to decide not to re-consult, but disagrees with councils having that discretion. The Ombudsman would not find a council to be at fault where it has followed the process as set down in law. If Mrs X thinks the national planning process on this issue should change, that would be a matter for her to raise with her MP as her national government representative.

When making a discretionary decision whether to consult on new plans, a council should consider whether, without re-consultation, any parties entitled to be consulted would be deprived of the opportunity to make representations they may have wanted to make on the amended application. The Council had to decide whether the changes between the original and second plans would prompt any different responses than had already been received from the earlier consultation.

Officers considered the objections Mrs X and others had already made would not be affected by the second plans, and that those amended plans would not give rise to different objections, so did not require further consultation.

The online planning documents show the applicant's second plans scaled back the length of the side elevation and amended the roof design. The side extension part of the development is closest to Mrs X's property and caused her concern. These second plans also removed the first-floor element of the rear extension. Officers took the view that the amended proposed development reduced the opportunity for it to cause planning harm to existing properties, including Mrs X's, and decided not to reconsult. The decision not to reconsult was a discretionary one officers were entitled to take. There is not sufficient evidence of fault by the officers, in the way they made their decision not to do further consultation, to warrant an

Ombudsman investigation.

Mrs X says it is her opinion that the amended second plans had the same impact on her property as the original plans. This would support the Council's decision not to reconsult on the amended plans. Mrs X's view indicates she would have made the same objections to the amended plans as she had already made against the original ones.

Mrs X says the Council did not take account of the impact of the development on her property. But the officer's report summarised her objections and then considered the impact on the amenity of Mrs X's property. Officers noted there would be some impact caused by the amended side extension, but that in their judgement it would not be enough to warrant refusal of the application.

There is not enough evidence of fault in the way the Council made its planning decision here to justify an Ombudsman investigation. I recognise Mrs X disagrees with the decision officers reached, but it is not fault for a council to properly make a decision with which someone disagrees.

**LGO Summary** - The Ombudsman will not investigate Mrs X's complaint about the Council not consulting her on the final accepted development plans for her neighbour's extension. There is not enough evidence of fault by the Council in its decision not to re-consult to warrant an Ombudsman investigation.

**Referred back for local resolution (0)**

3.3 A copy of the Ombudsman's letter is attached as an appendix to this report.

3.4 Members may also wish to note that the small number of complaints reaching the Ombudsman is set against a background of **52** complaints received by the Council in the period in question, which helps to illustrate the strength of the Council in ensuring complaints are dealt with promptly and appropriately.

3.2 Below is a table showing Local Government Ombudsman figures for 13 Local Authorities. The average for upheld complaints across the 13 is **38%**

	Complaints and enquiries received 2020/21		Figures for Upheld / Not upheld (detailed investigations carried out)			
			Upheld	Not upheld	Total	% Upheld
Cannock Chase	2	0	0	0	0	0%
Castle Point	4	2	1	1	2	50%
Chorley	8	2	1	1	2	50%
Fenland	8	3	0	3	3	0%
Forest of Dean	7	1	1	0	1	100%
High Peak Borough Council	4	0	0	0	0	0%
Hinckley & Bosworth	5	2	0	2	2	0%
Kettering	6	1	1	0	1	100%
Rugby	5	1	1	0	1	100%
Selby	5	2	0	2	2	0%
South Derbyshire	2	0	0	0	0	0%
<b>Staffordshire Moorlands</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0%</b>
Wyre Forest	1	0	0	0	0	0%

#### 4. How this report links to Corporate Priorities

4.1 Ensure our services are easily available to all our residents in the appropriate channels and provided 'right first time'.

#### 5. Alternative Options

5.1 There are none to consider.

**Mark Trillo**  
**Executive Director (Governance & Commissioning)**

## **Web Links and Background Papers**

## **Contact details**

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