

CORPORATE COMMITTEE 31 MARCH 2022

Report title: Published Ombudsman Report – Planning Service

Wards: St Leonard's

Portfolio: Cabinet Member for Planning, Investment and New Homes: Councillor Matthew Bennett

Report Authorised by: Eleanor Purser and Sara Waller: Strategic Directors for Sustainable Growth and Opportunity

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REPORT SUMMARY

The Local Government and Social Care Ombudsman (LGSCO) published a report on 25 November 2021 following an investigation into a complaint about the handling of a planning application by the Council. The complaint was partly upheld with a finding of injustice.

The complainant, referred to in this report as Mrs X, complained that the Council breached an assurance that it would refer a planning application to Planning Applications Committee (PAC) for determination. The application was subsequently determined under officer delegated authority.

The LGSCO found the Council at fault for causing Mrs X injustice. The LGSCO report recommended actions that the Council should take to remedy the injustice.

FINANCE SUMMARY

In order to remedy the injustice caused, the LGSCO recommended that the Council pay Mrs X £250 compensation. Payment was made to Mrs X on 6 January 2022. There are no other finance implications arising as a direct result of this report.

RECOMMENDATIONS

1. To note the Local Government and Social Care Ombudsman's (LGSCO) findings and recommendations, as detailed in paragraph 2.1 to 2.12 below.
2. To note the improvements introduced.
3. To note the Council has agreed to the remedies recommended by the LGSCO.

1. CONTEXT

- 1.1 Mrs X lives close to a public building. The relevant public organisation submitted a planning application to vary a condition of an existing planning permission to increase the number of people attending the public building. Mrs X and a number of other residents objected to the proposal.
- 1.2 During the consideration of the application, and in response to an email enquiry, Mrs X was advised in writing by a senior officer that the application would require reporting to PAC if officers were minded to recommend approval. This was incorrect as applications for variation of condition(s) do not automatically require referral to PAC. This incorrect advice was not immediately remedied by officers when the error was discovered.
- 1.3 A ward councillor requested the application be called in for consideration by the PAC under the PAC terms of reference. The material planning considerations raised by the councillor included concerns about parking and access. The PAC Chair ('the Chair') asked officers to provide further information from the applicant's travel assessment about existing parking stress and the impact on it were the application to be approved. Officers provided this information.
- 1.4 A few days before the Chair decided not to call in the application, residents submitted a transport survey which they had commissioned. A few days later residents submitted a further objection including their analysis of a travel event at the building. Officers considered the analysis of the travel event but did not refer it to the Chair as they considered it would not change her view.
- 1.5 The Chair decided not to call in the application for consideration by PAC. In her email to senior officers, the Chair said that she considered it would be difficult for PAC to reach a different conclusion to officers.
- 1.6 Planning permission was subsequently granted under officer delegated authority on 8 October 2019. An email was sent from a senior officer to Mrs X earlier that day to correct the error regarding referral to PAC. The email advised that the application would be approved under delegated authority.
- 1.7 Mrs X subsequently made a complaint that the Council:
 - a. Breached an assurance and legitimate expectation that it would refer a planning application to the Planning Applications Committee for determination.
 - b. Failed to refer the planning application to the Planning Application Committee in accordance with the Committee's terms of reference.
 - c. Failed to act transparently and with integrity as officers withheld that the application would be determined by delegated decision until shortly before the application was determined.
 - d. Failed to disclose the traffic survey carried out by residents to the Chair of the Planning Applications Committee when she was considering if the application should be determined by the Committee or delegated decision.
 - e. Failed to provide evidence that officers had considered the legal requirement to refer the application to the Planning Applications Committee.
 - f. Failed to properly investigate her complaint.
- 1.8 Mrs X considers that as a result she was denied the opportunity to:
 - a. Brief her ward councillor on the planning grounds for the application to be considered by the PAC;
 - b. Make a case to officers on why the application should be referred to the PAC in accordance with its terms of reference; and
 - c. Assess the planning officer's recommendation to approve the application and make further objections, and have the ability to attend and speak at the PAC.

- 1.9 The LGSCO investigated the case and issued a report partially upholding the complaint and identifying a number of faults. These were:
- a. The Council's decision not to immediately inform Mrs X of the error regarding PAC referral when it came to light, and to subsequently inform her on the same day the application was determined, gave the impression of a lack of transparency. On balance, this was considered to be fault.
 - b. On balance, the investigator found fault in the Council's record keeping and the lack of an audit trail of its consideration of whether to call in the application and reasons for its decision. However, the LGSCO did not consider that the lack of record keeping meant its decision not to call in the application was flawed.
 - c. There was no evidence provided to show that the PAC Chair considered the transport survey submitted by the residents which took a different view to the applicant's survey. The LGSCO was not satisfied that the PAC Chair had all the relevant information when making her decision about the call in request and considered this to be fault.
- 1.10 The LGSCO final decision was issued on 25 November 2021 and set out a number of recommendations and actions.

2. PROPOSAL AND REASONS

LGSCO recommendations and service improvements

- 2.1 The section below outlines the specific recommendations made by the LGSCO and the subsequent actions taken by the Council to address these.

Action 1: The Council send a written apology and makes a payment of £250 to Mrs X to acknowledge the raised expectations, distress, loss of trust and uncertainty caused to her by the Council wrongly advising the planning application would be considered by PAC, lack of transparency caused by the delay in notifying Mrs X of the error and the failure to consider residents' transport survey when deciding whether to call-in the planning application.

- 2.2 The LGSCO advised that the Council should take this action within one month of the date of the LGSCO final decision.

- 2.3 A written apology was sent to Mrs X from Rob Bristow, Director Planning, Transport and Sustainability on 24 December 2021. Mrs X was asked to provide details to enable the compensation payment to be made by BACS. Mrs X was paid £250 compensation by BACS on 6 January 2022.

Action 2: By training or other means, ensures the Planning Applications Committee Chair is aware they should consider all relevant information when deciding whether to call in an application and, in making that decision, be alert to the risk of pre-determination.

- 2.4 The LGSCO advised that the Council should take this action within three months of the date of the LGSCO final decision.

- 2.5 The Planning Service has reviewed its process relating to the consideration of councillor call-in requests under the PAC terms of reference. The procedure to date has been for officers to provide the Chair with a briefing note that responds to the material planning reasons detailed in the written request made by the councillor. This is then considered by the Chair and a decision is made as to whether the application requires reporting to PAC for determination, or whether it can be determined under officer delegated authority.

- 2.6 The LGSCO decision has been discussed with the Chair and an updated process agreed and introduced. The updated process requires officers to prepare a draft officer report, which will be provided to the Chair for his/her consideration. The report will include a summary of all representations received from external/internal consultees and interested parties. An officer assessment of the proposal will be contained within the report and a draft recommendation made. This will include a response to the material planning matters raised in the written councillor call in request.
- 2.7 This draft report will inform the Chair's decision as to whether the application requires referral to PAC under the adopted terms of reference detailed within the Council's Constitution.
- 2.8 If the Chair decides that the application does not require referral to PAC, the Chair will notify the relevant ward councillor of his/her decision in advance of the decision being made under officer delegated authority.

Action 3: Provides evidence of the Council's record keeping of its consideration of whether to call in an application to PAC under its terms of reference.

- 2.9 The LGSCO advised that the Council should take this action within three months of the date of the LGSCO final decision.
- 2.10 In correspondence with the LGSCO, the Council advised that it has a simple and efficient system to record its decisions on PAC call in requests. This takes the form of a spreadsheet to record all councillor call-in requests and the dates of written correspondence with the Chair. This evidence was provided to the LGSCO in redacted form on 28 February 2022.
- 2.11 In addition, the officer delegated report template has been updated to require that a commentary is provided of the consideration of whether to call in the application and reasons for its decision. This will address the LGSCO's concerns about record keeping and an audit of the Chair's decision to allow determination under officer delegated authority.
- 2.12 The updated processes above are being disseminated across the Development Management service.
- 2.13 The LGSCO has subsequently confirmed on 4 March 2022 that they are satisfied that the local authority has now complied with the agreed remedy in full and have closed the case accordingly.

3. FINANCE

- 3.1 The Council agreed to pay £250 compensation to Mrs X in line with the LGSCO's recommendations. This cost can be contained within existing revenue budgets.
- 3.2 It is not expected that there will be any other financial implications arising from this report.

4. LEGAL AND DEMOCRACY

- 4.1 The Commission for Local Administration, usually known as the Local Government and Social Care Ombudsman (LGO), was established by the Local Government Act 1974. If the Ombudsman is of the opinion that an injustice has been caused as a result of maladministration, he/she shall issue a formal report and it shall be the duty of the authority to consider the report and to notify the

Ombudsman of the action that it has taken or proposes to take, including making a compensation payment.

4.2 There were no further legal comments arising from this Report.

4.3 There were no further comments from Democratic Services.

5. CONSULTATION AND CO-PRODUCTION

5.1 Not applicable.

6. RISK MANAGEMENT

6.1 Failure to put in place the LGSCO recommended remedies may result in perception of lack of transparency and fairness in decision making.

7. EQUALITIES IMPACT ASSESSMENT

7.1 Not applicable.

8. COMMUNITY SAFETY

8.1 Not applicable.

9. ORGANISATIONAL IMPLICATIONS

Environmental

9.1 None.

Health

9.2 None.

Corporate Parenting

9.3 Not applicable.

Staffing and accommodation

9.4 Not applicable.

Responsible Procurement

9.5 Not applicable.

10. TIMETABLE FOR IMPLEMENTATION

10.1 Paragraphs 2.2, 2.4 and 2.9 set out the LGSCO's expectations around the timetable for the implementation of the actions set out in its report. The LGSCO has subsequently confirmed on 4 March 2022 that they are satisfied that the local authority has now complied with the agreed remedy in full and have closed the case accordingly

AUDIT TRAIL

Name and Position/Title	Lambeth Directorate	Date Sent	Date Received	Comments in paragraph:
Councillor Matthew Bennett	Cabinet Member for Planning, Investment & New Homes	10.03.22		
Eleanor Purser and Sara Waller Strategic Directors	Sustainable Growth and Opportunity	10.03.22	13.03.22	
Rob Bristow, Director	Planning, Transport & Sustainability	10.03.22	18.03.22	
Matthew Gaynor, AD Capital Finance	Finance and Property	10.03.22	15.03.22	
Fateha Salim, Assistant Director	Legal and Governance	10.03.22	18.03.22	
Chloe Morris, Democratic Services Officer	Legal and Governance	10.03.22	11.03.22	

REPORT HISTORY

Original discussion with Cabinet Member	N/A
Report deadline	18.03.2022
Date final report sent	18.03.22
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	No
Date first appeared on forward plan	N/A
Key decision reasons	N/A
Background information	<u>Officer Delegated Report</u> <u>LGSCO decision</u>
Appendices	Appendix 1 – LGSCO Report