

# North Tyneside Council

## Report to Cabinet

### Date: 14 May 2018

### ITEM 5(e)

**Title:** Report of the Local Government and Social Care Ombudsman

**Portfolio(s):** Housing and Transport

**Cabinet Member(s):** Councillor John Harrison

#### Report from Service

**Area:** Law and Governance

**Responsible Officer:** Vivienne Geary, Head of Law and Governance

**Tel:** 0191 643 5339

**Wards affected:** All

## PART 1

### 1.1 Executive Summary:

The Local Government and Social Care Ombudsman (LGSCO) has issued a report dated 16 February 2018 finding maladministration causing injustice. The LGSCO acknowledged that the Authority did correctly assess the noise nuisance and planning enforcement case. However, the Authority failed to adequately explain its reasoning.

As recommended by the LGSCO the Authority has written a letter of apology to the complainant to acknowledge the frustration and time and trouble the failure to explain its reasoning caused.

### 1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) note the findings and recommendation of the LGSCO as described in this report and set out in the LGSCO's report at Appendix 1; and
- (2) note the actions taken by the Authority to comply with the recommendations of the LGSCO's report, as set out in 1.5.3 and 1.5.4 of this report.

### 1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 19 February 2018.

### 1.4 Council Plan and Policy Framework

This report relates to the following priority in the Our North Tyneside Plan:

Our places will :

- Be great places to live
- Offer a good choice of quality housing
- Provide a clean, green, healthy, attractive, safe and sustainable environment
- Have an effective transport and physical infrastructure

## **1.5 Information:**

### **1.5.1 Background**

The details of this complaint and the findings of the LGSCO investigator are set out in full in Appendix 1.

The complainant, Mr B, says the Authority failed to properly investigate his complaint of noise nuisance from a neighbouring gym. Mr B says the Authority only considered volume in assessing whether it was a statutory nuisance and did not consider the frequency or type of noise, the timings, the location of the building in a residential area, or the sudden, unexpected and intrusive nature of the noise. Mr B also says the Authority failed to properly consider the planning permission at the gym, and failed to properly consider his complaint.

Mr B moved to his property in May 2015 and shortly after he heard sudden and irregular noises. Mr B went to the building and discovered it was a gym. The noises he hears are heavy weights being dropped and reverberating. Mr B complained to the Authority about the noise nuisance and the use of the building.

The Authority's procedure for dealing with domestic noise complaints in the first instance requires the complainant to keep diary sheets of the noise. If the diary sheets show there is a nuisance the Authority will offer to install noise monitoring equipment. All tapes must be listened to and the complainant informed by telephone followed by letter, within 10 working days, of the outcome being known.

Mr B completed diary sheets, and the Authority installed noise monitoring equipment; in accordance with its procedure. The Authority also completed a second set of noise monitoring but failed to tell Mr B of the result of the monitoring within ten working days; the Authority has apologised for this.

Mr B says the Authority only focused on the volume of the noise when assessing whether there was a statutory nuisance in this case. Mr B has this impression because of the Authority's letter of 30 June 2017, which says "The decibel levels were not considered to be at a sufficient level that they would constitute a statutory nuisance." The LGSCO investigation found that the Authority failed to explain to Mr B how it considered other factors in determining that the noise nuisance is not a statutory nuisance, and therefore it has no powers to help Mr B. The LGSCO did find that the Authority properly assessed the noise nuisance, considering various relevant factors, not just the volume as Mr B believes.

As a result of Mr B's complaint, the Environmental Health Team referred concerns about the use of the building as a gym to the Planning Enforcement Team. The Authority established that the correct planning use had been in operation for more than ten years, as in 2004 it was used as a martial arts centre. However to assist Mr B the Authority has spoken with the owner of the building regarding reducing noise and being a considerate neighbour; but the Authority has no powers to require certain levels of soundproofing or limiting the use of the building as Mr B would wish.

### 1.5.2 Findings

The findings of the LGSCO are summarised between paragraphs 26 and 28 in Appendix 1 as follows:

The Authority correctly assessed the noise nuisance and the planning enforcement issue, but accepts it delayed responding to Mr B's initial concerns. The Authority should have provided the result of the noise monitoring within ten working days, but instead it took around two months. The Authority also delayed giving the result of the planning enforcement enquiry. The Authority has apologised which the LGSCO have confirmed is appropriate.

Mr B complained further as he did not feel the noise nuisance had been adequately assessed. Mr B felt the Authority had only concentrated on the volume of the noise. The stage two complaint response letter did not address Mr B's concerns.

The LGSCO investigator considered the Authority's responses to Mr B and does not feel they give sufficient information for him to understand the various factors it considered when establishing there was not a statutory nuisance. Therefore, the Authority failed to address Mr B's specific concerns in its complaint correspondence. This caused Mr B the time and trouble of progressing his complaint to the Ombudsman, when the Authority could have resolved it internally had it given more detail and responded to his specific concerns.

### 1.5.3 Recommendations

The LGSCO has made the following recommendation, as set out under paragraph 29 of Appendix 1:

"Apologise to Mr B, within two weeks of the Ombudsman's final decision, for the time and trouble it caused him having to pursue his complaint. And for the frustration caused by its delay, and lack of thorough explanation of the outcome of Mr B's noise nuisance complaint."

### 1.5.4 Actions taken

As set out in the recommended by the LGSCO the Authority sent a letter of apology on 21 February 2018 to Mr B.

## 1.6 **Decision options:**

The following decision options are available for consideration by Cabinet:

### Option 1

Cabinet is requested to note the findings of the report (Appendix 1), its recommendation and action taken to address the LGSCO's recommendation.

Option 1 is the recommended option.

## 1.7 **Reasons for recommended option:**

To comply with the recommendations of the LGSCO.

## **1.8 Appendices:**

Appendix 1: The Ombudsman's final decision report,

## **1.9 Contact officers:**

Phil Scott, Head of Environment, Housing and Leisure, tel. (0191) 643 7295

Viv Geary, Head of Law and Governance, tel. (0191) 643 5339

Alison Campbell, Senior Business Partner, tel. (0191) 643 7038

## **1.10 Background information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

LGSCO's final decision report (attached at Appendix 1).

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

There are no financial implications arising as a result of this report.

### **2.2 Legal**

The Authority is required to consider the report of the LGSCO and to determine its response to the report. There are no other direct legal implications arising as a result of this report.

### **2.3 Consultation/community engagement**

Officers in Environmental Health have been consulted about the action identified to address the LGSCO's recommendation.

### **2.4 Human rights**

There are no human rights implications arising as a result of this report.

### **2.5 Equalities and diversity**

There are no equality and diversity implications arising as a result of this report.

### **2.6 Risk management**

There are no risk management implications arising as a result of this report.

### **2.7 Crime and disorder**

There are no crime and disorder implications arising as a result of this report.

### **2.8 Environment and sustainability**

There are no environment and sustainability implications arising as a result of this report.

### PART 3 - SIGN OFF

- Deputy Chief Executive  X
- Head of Service  X
- Mayor/Cabinet Member(s)  X
- Chief Finance Officer  X
- Monitoring Officer  X
- Head of Corporate Strategy  X