

North Tyneside Council

Report to Cabinet

Date: 14 May 2018

ITEM 5(f)

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 finding maladministration causing injustice. The LGSCO found that there was a delay in serving a Breach of Condition Notice (BCN) in relation to a development site near to the home of the complainant, Mr C and some poor communication with him. The LGSCO acknowledged that the Authority has already provided a satisfactory remedy for the injustice caused including an apology, training and ensuring planning conditions are met.

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) note the findings of the LGSCO as described in this report and set out in the LGSCO's report at Appendix 1; and
- (2) note the actions already taken by the Authority to provide a satisfactory remedy to this complaint as set out in Appendix 1.

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 13 April 2018.

1.4 Council Plan and Policy Framework

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

- Our People will be listened to so that their experience helps the Council work better for Residents

1.5 Information:

1.5.1 Background

The Authority received a letter 22 March 2018 from LGSCO advising that they had revised their original finding of 13 October 2017 from satisfied with the Authority's actions to a finding of maladministration and injustice. This revised finding requires the matter to be reported to Cabinet within 3 months of receipt.

The Authority granted planning permission subject to conditions for a large housing development with associated access, infrastructure and engineering works in November 2015. The permission was subject to several conditions including a restriction on construction, deliveries and vehicle movements outside the hours of 8am and 6pm Monday to Friday and 8am to 2pm on Saturdays. This condition was to safeguard the amenity of nearby residents. There was also a condition requiring a scheme to be provided and approved by the Authority before development started to prevent the deposit of mud and other debris on the highway and to suppress dust from construction activities. The scheme was to include details of mechanical street cleaning brushes and the provision of water bowsers. There was also a condition to keep and protect all hedges and hedgerows unless identified on the approved plans for removal.

The complainant, Mr C, complains the Authority failed to properly investigate and take appropriate and timely action in response to his reports of planning breaches at the nearby development site. Mr C also complains the Authority has wrongly refused his request for a pedestrian controlled crossing. Mr C says because of the Authority's fault he suffered from mud, dust and noise outside the permitted working hours from the development for longer than necessary. Mr C also says the existing arrangement for the crossing point near his property is not safe to use as a pedestrian.

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

1.5.2 Findings

The findings of the LGSCO are summarised between paragraphs 13 and 31 in Appendix 1 as follows:

Mr C refers to the Authority's Highways Team 'ignoring' the Planning Committee's acceptance that a particular crossing point needed a pedestrian-controlled crossing and instead allowed a pedestrian refuge. The Authority has provided a copy of the agreed Committee meeting minutes. These include an account of Mr C's detailed submission to the Committee and the Committee's resolution which does not record such a request.

Mr C sought information about the proposed crossing in November 2015 and chased the Authority in December and January 2016. The Authority provided a reply in January and apologised for the delay in responding.

The Authority provided detailed reasons for its decision about the type of crossing at this location which are accepted by the LGSCO.

Mr C raised several issues in February 2016 including concerns about hedgerow removal and mud on the road. Mr C also sought the timescale for the required highway improvement works. The Authority advised Mr C that it was considering an application to discharge certain conditions and provided a link to the application. The Authority advised the timescale was outstanding.

Mr C reported in March that work was starting on site at 7.30am instead of the permitted 8am and provided photographs of mud on the road. The Authority reminded the developer about the permitted hours of construction and sought a timescale for providing a suitable wheel wash. Mr C reported in April the developer was still breaching the permitted hours of work. The Authority visited the site and wrote to the developer about this requirement. The developer agreed to a traffic survey to monitor the arrival time of deliveries to site and advised it may seek an amendment to the relevant condition to amend the start time from 8am to 7.30am.

The Authority during its complaint correspondence with Mr C acknowledged times when there were delays or inaccurate information in its responses to him and apologised. It also confirmed the following in April:

- it would provide customer service training and monitor customer service performance;
- it would take appropriate action about performance issues; and
- there were wheel wash facilities, water bowsers and road sweepers on site as required as well as a fully operational eco bath.

Authorities have no duty to monitor development. They are dependent on members of the public, harmed by unauthorised development, complaining to them about it. They then have a duty to investigate. The Authority has provided evidence it responded to Mr C's reports of planning breaches, visited the site and corresponded with the developer. The Authority was also in regular communication with Mr C.

Authorities have power to enforce but they have no duty to do so. If an Authority decides that enforcement action is appropriate it must follow government guidance which says that any action should be proportionate and commensurate with the breach of control to which it relates. The LGSO found that the Authority was not acting with fault in its approach of working with the developer to achieve compliance. There was some delay in serving the Building Compliance Notice and some poor communication with Mr C. The LGSCO consider the Authority's apology and actions above are enough to remedy Mr C's injustice.

1.5.3 Recommendations

The LGSCO has found fault and injustice against the Authority. The LGSCO has not made any recommendations, as the investigator is satisfied the action the Authority has already taken is enough to provide a satisfactory remedy. As set out under paragraph 32 of Appendix 1.

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).

Option 1 is the recommended option.

1.7 Reasons for recommended option:

The findings of the LGSCO have to be brought to the attention of Cabinet as set out in the Local Government Act.

1.8 Appendices:

Appendix 1: The Ombudsman's final decision report,

1.9 Contact officers:

Jackie Palmer, Planning Manager, Planning Policy & DM tel. (0191) 643 6336

Viv Geary, Head of Law & 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

There are no consultation/community engagement implications arising as a result of this report.

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