

Cabinet Office

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To: COUNCILLOR JONATHAN BIANCO
CABINET MEMBER FOR FINANCE AND
BUSINESS SERVICES

COUNCILLOR KEITH BURROWS
CABINET MEMBER FOR PLANNING AND
TRANSPORTATION

c.c. All Members of Executive Scrutiny Committee
c.c. Chairman of Policy Overview Committee
c.c. Jean Palmer, Corporate Director
c.c. David Thackeray, Customer Liaison Officer
c.c. Conservative, Labour and Liberal Democrat
Group Offices (inspection copy)

Date: 20th February 2007

Decision Request Form INDIVIDUAL CABINET MEMBER

OMBUDSMAN – SETTLEMENT PAYMENT

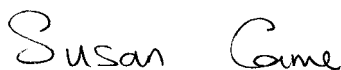
Attached is a report requesting that a decision be made by you as an individual Cabinet Member. I can confirm that although the decision has not been identified in the Forward Plan, the Head of Democratic Services has issued the appropriate notice accepting that the decision cannot wait until the next Forward Plan is published and it is therefore in order for you to make a decision.

You should take a decision **on or after Wednesday 28th February 2007** in order to meet Constitutional requirements about publication of decisions that are to be made.

Please indicate your decision on the duplicate memo supplied, and return it to me when you have made your decision. I will then arrange for the formal notice of decision to be published.

You may wish to discuss the report with the Corporate Director before it is made. If you do not wish to accept the officers recommendation and the reasons for it, you are urged to contact the Corporate Director before making this decision.

Please note that your decision may be subject to call-in and will not therefore be implemented until 5 working days after it has been published.



SUSAN CAME
Cabinet Manager

Title of Report : OMBUDSMAN – SETTLEMENT PAYMENT

Decision made :

Reasons for your decision : (e.g. as stated in report)

Alternatives considered and rejected : (e.g. as stated in report)

SignedDate.....

Cabinet Member for Finance and Business Services / Planning and Transportation

OMBUDSMAN – SETTLEMENT PAYMENT

Contact Officers

Susan Barnard/David Thackeray

Papers with this report

Cabinet Decisions - 12th December 2006

SUMMARY

This report seeks authorisation to make a compensation payment in excess of £1000 to an individual as a result of a finding of maladministration by the Local Government Ombudsman.

RECOMMENDATION

That the Cabinet Members for Planning & Transportation and Finance & Business Services authorise a payment of £20,000.00 compensation, as agreed by Cabinet on 12th December 2006, following receipt of the required Valuation Report.

REASONS FOR OFFICER RECOMMENDATIONS

The recommended payment is sought to close the complaint by mutual agreement.

OPTIONS AVAILABLE

Challenge the valuation and seek further opinion.

INFORMATION

Full details of the background to this case are contained in the Cabinet Report. The difference in market value of the complainant's property with and without the development next door is assessed as £20,000.00.

This valuation has been assessed by an independent company and the Ombudsman has indicated that he is satisfied that payment of the sum as the Council's response to the complaint.

Financial Implications

The report sets out clearly that the Council should make a once off payment of £20,000.00 to settle the complaint. This will be met from the Planning & Community Services budget as a one off unbudgeted cost in 2006/2007.

Legal Comments

The legal comments are contained within the Cabinet report.

External consultations carried out

N/A

Background documents

Cabinet report 12.12.06

**REPORT OF THE LOCAL GOVERNMENT OMBUDSMAN
ON A FINDING OF INJUSTICE CAUSED BY
MALADMINISTRATION BY THE COUNCIL**

ITEM 8

Cabinet Portfolio

Planning and Transportation

Report Author

David Thackeray, Customer Liaison Officer

Papers with report

None

HEADLINE INFORMATION

Purpose of report

The Ombudsman found that the complainant in this case suffered injustice as a result of maladministration, and the Council is therefore required to consider the final report and tell the Ombudsman, within three months, the action it has taken or proposes to take on the recommendations.

Contribution to our plans and strategies

This report contributes to effective delivery of the Council's formal Complaints Procedure.

Financial Cost

- £5,000.00 to the complainant for "time and trouble".
- An as yet unspecified sum for compensation to reflect any reduction in value of the complainant's home.

Relevant Policy Overview Committee

Residents' and Environmental Services Committee.

Ward(s) affected

Not Applicable.

RECOMMENDATIONS

That the Cabinet:

- 1. Agrees immediate payment of the £5,000.00 to the complainant as compensation for time and trouble.**
- 2. Accepts the recommendation of the Ombudsman to pay to the complainant the difference between a 'before and after' valuation of his home and delegates authority to the Cabinet Member for Planning and Transportation to approve the payment following receipt of the 'before and after' valuation.**
- 3. Agrees the procedural review process and outcomes.**

INFORMATION

Reasons for recommendation

The above recommendations comply with the required remedy in the Ombudsman's report, which contains three specific recommendations. The Ombudsman's recommended time and trouble payment of £3,500.00 was increased to £5,000.00 following discussion with the Leader of the Council.

Alternative options considered

The Council has the option to reject any or all of the Ombudsman's recommendations. However, that option is not recommended in this case because the Council was clearly at fault and has never sought to deny responsibility for the error made.

Comments of Policy Overview Committee(s)

Committee did not comment on the report.

Supporting Information

1. On 19th January 2004, the Council, as Local Planning Authority (LPA), wrongly issued a Certificate of Lawfulness for the proposed construction of a three-storey side extension at a property in the Borough. Issuing the certificate is a formal determination by the LPA that the proposed development is permitted development (PD) under the Town and Country Planning (General Permitted Development) Order 1995 and, therefore, that planning permission is granted by that order.
2. However, the planning case officer's report makes it clear that the application should have been refused because it does not meet the PD criteria. Following advice from Legal Services, the LPA attempted to correct this administrative error by issuing the correct notice of refusal, together with a covering letter dated 26th January 2004, explaining, and apologizing for, the error.
3. Although the applicant did not commence building works until March of 2004, he refused to accept the Council's correction and a Legal exchange followed, culminating in the LPA taking Counsel opinion on the matter. That opinion was that the original Certificate is lawful, because there is no provision within the Planning Acts to correct an error such as the one made in this case.
4. In order to correct its mistake, the Council should have brought a claim for judicial review by the High Court within 3 months of the date of the incorrect decision notice being issued but this was not pursued initially because of the advice from Legal Services. (The mistake could be dealt with and corrected as a simple administrative error.) By the time the Council had received Counsel's advice it was outside the three-month time limit and the High Court would not have granted permission to bring a judicial review outside the 3-month time period. The Council wrote to the applicant's solicitors on 23rd November 2004 accepting that the Certificate is conclusive as to the lawfulness of the proposed development.

5. In June 2004, the LPA wrote to the complainant (the next door neighbour) and stated that the Certificate had been refused and the structure was therefore unauthorized, and would be subject to enforcement action. This information was based on the original erroneous view that the Council could correct its original error by issuing a revised decision notice. However, the complainant was not updated following the conclusion of the legal debate and the Ombudsman found that the Council failed to keep him properly informed.

6. In June 2004 action was taken on an allegation that this was a dangerous structure. The complainant's concern at that stage, and early in 2005, appeared to be that the part completed structure was unsafe and a danger to his family. This issue was swiftly investigated and dealt with by the LPA and no danger was found.

7. Building works continued during 2005 and the complainant became aware that the Certificate had been issued in error, although the situation had been explained to the complainant's Ward Councillor, on his behalf, in January 2005. The complainant took his complaint to the Ombudsman at the end of 2005 and he found that injustice had been caused by maladministration on the part of the Council.

8. The Ombudsman's specific recommendations in this case are as follows:

The Ombudsman recommends that the Council:

1. appoints an independent party to undertake a "before and after" valuation of the complainant's home and pays the complainant compensation to reflect any diminution in its value,
2. pays the complainant £3,500 to reflect the injustice to him and for his time and trouble in pursuing matters and,
3. undertakes a review of its procedures and takes steps to ensure that its legal advice is accurate and complete.

9. Progress on the Ombudsman's recommendation is as follows:

(i) Corporate Property Services has contacted the complainant and agreed the appointment of an independent property valuer to carry out the "before" and "after" valuation of the complainant's house. This valuation will compare the value of the complainant's house before the extension to the neighbouring property is built and then after construction, on the basis that it has been properly finished in a good workmanlike manner. (Note that currently it is only partly completed.)

The independent valuer's report has not been obtained before preparation of this Cabinet report but the sum could be substantial because the authorised extension is three storeys in a road of two-storey houses and could therefore be considered to be an eyesore. The valuation report should be received in early December.

The recommended time and trouble payment has been discussed with the Leader of the Council who feels that the £3,500 compensation offered is not sufficient and has suggested to officers that the sum of £5,000 be paid to the complainant with our profuse apologies. This sum has been agreed by the Cabinet Member for Planning and the Director of Planning and Community Services, and is ready for immediate payment.

(ii) The planning department has reviewed its procedures and set up a system to record all incoming correspondence and to allocate to the relevant officer, with the officer's name noted. The Corporate Director will identify complaints and allocate to the Customer Liaison Manager to progress in accordance with the Council's policy. All complaints are now logged and tracked in a new corporate system.

The system for checking reports from planning officers has three stages with final sign off by the Head of Service so the error made in this case should not recur.

(iii) Following the discovery of the error which had been made in this case Legal Services reviewed their internal procedures and adopted a system whereby any cases which reveal areas of law which have not been dealt with before are checked by 2 officers before advice is provided. Whilst this may cause some minor delays it ensures that correct advice is provided. If it is felt by Legal Services that they are not 100% sure in respect of advice they will recommend to the Client that advice from counsel is sought. The result of this approach is that in any complex cases at least 3 lawyers will look at the matter.

(iv) Democratic Services handle the internal investigation of complaints raised by the Local Ombudsman. This involves seeking comments from relevant departments, drafting replies on behalf of the Acting Chief Executive and supplying necessary documents. As part of this process Democratic Services provide a quality check to ensure that departments have fully responded to the questions raised by the Ombudsman.

As a result of this case Democratic Services have concluded that the information supplied in response to the Ombudsman did not acknowledge sufficiently that there had been unacceptable delays in responding to the complainant and that he had not been kept properly informed. The lesson to be learned for the future is that there needs to be a more robust challenge if there are any doubts about the adequacy of the information supplied.

However it should be noted that this is the first finding of maladministration with injustice against the Council since 1999 and that compared to other London Boroughs the Council has a generally very good record in the low number of Ombudsman complaints and findings of maladministration. This case is therefore extremely unusual and does not warrant a wholesale change to procedures.

Financial Implications

10. The report sets out clearly that the Council should make a payment of £5,000.00 to settle recommendation 2 above. This will be met from the Planning budget as an unbudgeted cost in 2006/2007. There will also be an unbudgeted cost to cover the "before and after" compensation once the valuation requested by recommendation 1 above has been completed.

EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

11. The unbudgeted costs incurred may have a negative impact on the Council's financial position.

12. The Council's willingness to accept responsibility for this error and address its mistake promptly and in full may have a positive impact on how the Council is perceived by residents, particularly in view of the Leader's decision to increase the compensation.

13. Even though this case was an aberration, the resulting review of procedures should ensure that decision notices are issued correctly and all complainants are kept informed of the outcome of their complaints.

Consultation Carried Out or Required

None required.

CORPORATE IMPLICATIONS

Corporate Finance

14. A corporate finance officer has reviewed this report and the financial implications within it. The compensation is not budgeted for and will result in an adverse movement in budget monitoring. It is noted that the 'before and after' payment has not been quantified for this report – this is also proposed to be met from within existing budgets in the Planning & Community Services Group, and the associated financial risk will be managed by the Group.

Legal

15. The Local Government act 1974 established the Local Government Ombudsman. His functions are to investigate complaints by members of the public who consider that they have been caused injustice by maladministration in connection with action taken by, or on behalf of, local authorities in exercise of their administrative functions. Once an investigation has been completed, the Ombudsman will publish a report setting out his findings and recommending a remedy. A local authority is not required to comply with the remedy proposed by the Ombudsman but would have to explain publicly why it is has not followed his recommendation.

16. The Council has powers under its existing arrangements to make compensation payments as a result of investigations by the Ombudsman.

Corporate Property Services

17. The comments of the Head of Corporate Property Services are contained in the body of the report. The "before and after" valuation has not previously been seen by Property officers in reports to this authority, although it is a common recommendation by the Ombudsman in cases of this type. It is recommended that the appropriate Cabinet Member be given delegated authority to sign off the final sum arising from the valuation report.

Relevant Service Groups

18. Democratic Services has reviewed its procedures, including those for reporting to the Ombudsman, and in future will be more challenging to Council departments, particularly when there have been delays in responding to complaints or a failure to keep the complainant informed. The recent implementation of the new customer access system will enable us to track complaints better and respond more effectively in future.

No other service groups were consulted.

BACKGROUND PAPERS

Local Government Ombudsman - Report on an Investigation into Complaint No 05/A/12836 against the London Borough of Hillingdon. 28th September 2006.