

# Cherwell District Council

## Council

18 December 2017

### Local Government Ombudsman Annual Report 2016/17

## Report of Assistant Director – Transformational Governance and Monitoring Officer

This report is public

### Purpose of report

To provide council with the Local Government Ombudsman's annual report on Cherwell District Council for the financial year 2016/17.

## 1.0 Recommendations

The meeting is recommended:

- 1.1 To note the report

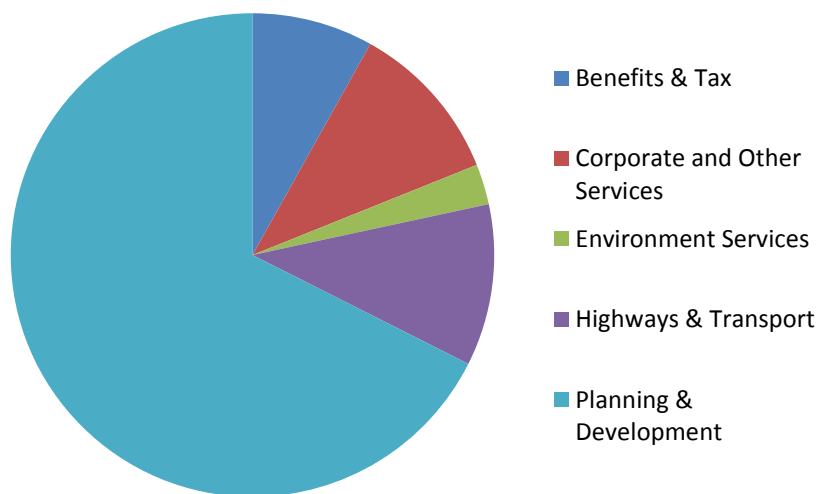
## 2.0 Introduction

- 2.1 The Local Government and Social Care Ombudsman (LGO) provides the final stage for complaints about councils and social care after the councils own complaints procedure has been exhausted. Annually the LGO issues an annual report covering complaints that have been received and their outcome. This report provides their findings for 2016/17.

## 3.0 Report Details

- 3.1 The LGO is the final stage for complaints about councils, all adult social care providers (including care homes and home care agencies) and some other organisations providing local public services. They are a free service provided to people that have completed all stages of the Councils own complaints procedure and remain unhappy with the outcome. The LGO have guidelines regarding what they can investigate. Complainants must have complained to the council within 12 months of becoming aware of the matter and been directly affected by the matter resulting in 'personal injustice'. Not all complaints will be investigated, for example if the Ombudsman does not feel they will find fault regarding Council.

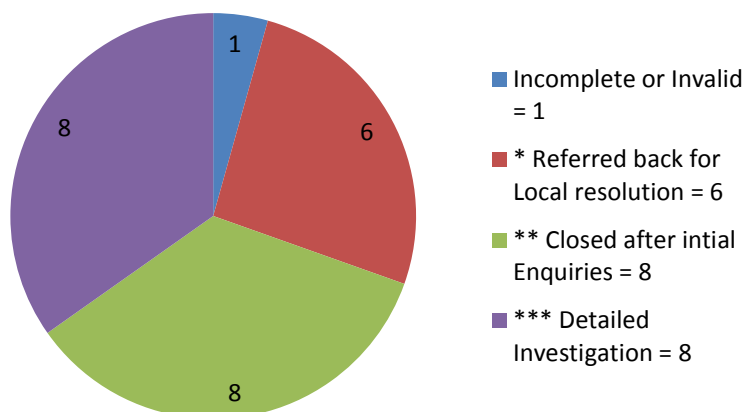
3.2 The LGO received a total of 37 complaints and enquiries against Cherwell District Council for the period 1 April 2016 – 31 March 2017, the numbers received by service area as categorised by the LGO are as follows:



Benefits & Tax	3
Corporate and Other Services	4
Environment Services	1
Highways & Transport	4
Planning & Development	25

3.3 The LGO returned decisions on 23 complaints in the period 1 April 2016 – 31 March 2017. It should be noted that decisions may relate to complaints made in the previous year and investigations may not have been completed on all complaints received during 2016/17 and therefore a decision may not have been reached and the number of complaints received and decisions made will always differ.

Decisions by the LGO are divided into different categories dependent on their findings, the 23 received about Cherwell District Council were categorised as follows:



\* Complaints that had not completed the CDC Complaints Procedure

\*\* Complaint assessed by LGO Assessment team and not passed for further investigation

\*\*\* Complaints assessed and forwarded to investigator for investigation.

Of the eight complaints investigated four of the complaints investigated were upheld, these all related to development management, details of the complaints are as follow:

### Complaint 1

The complaint relates to the behaviour of planning officers. The complainant states they have given inaccurate and misleading information. As a consequence of this the complainant states that they have lost their planning consent.

#### LGO Decision

The Ombudsman found evidence of fault by the Council in its handling of a reserved matters application submitted by Mr and Mrs Y. The Council has proposed to reimburse Mr and Mrs Y for the application fee and some of the costs associated with applications submitted by them during 2010 and 2011.

#### Lesson Learnt

As a result of this complaint the Council has introduced a new question on the Checklist for Validation/Registration, which says "If this is a subsequent application, have you checked that the outline consent has not expired?"

### Complaint 2

The Council consistently treated the complainants property as not being curtilage listed up to September 2014 when it told a potential buyer the property was curtilage listed and insisted on the complainant obtaining listed building consent for works they had carried out previously;

The Council failed to notify the complainant when it decided the property was curtilage listed even though it told a potential buyer; and the Council's decision that the property is curtilage listed is wrong and, in reaching this decision, it failed to take into account all relevant information.

### **LGO Decision**

The Council was at fault in failing to identify Ms T's property as curtilage listed prior to 2014.

The Council was also at fault in failing to notify Ms T when it decided the property was curtilage listed in September 2014.

The Council agreed to a satisfactory remedy for the injustice Ms T suffered as a result of these failings.

To remedy the injustice to Ms T, the Council agreed to pay her:

- £500 in recognition of the distress and inconvenience she suffered as a result of its failings;
- £4965.70 in respect of the legal fees she incurred for obtaining advice about the planning matter and applying for listed building consent; and
- £907.50 for her share of the costs of the abortive sale.

### **Lesson Learnt**

The main lesson learned is that officers in Development Management have been informed that they must now give careful consideration in determining whether a building is curtilage listed, particularly when the council hasn't previously considered it to be so. As such, the advice now is that officers must make sure that they always take legal advice on any curtilage listing issues.

## **Complaint 3**

Mr X complained the Council wrongly issued a completion certificate for defective work which did not comply with the building regulations.

### **LGO Decision**

The Council failed to demonstrate it took all reasonable steps to satisfy itself the work at Mr X's property met the requirements of the building regulations amounts to fault. The Ombudsman was unable to provide a remedy for this fault.

### **Lesson Learnt**

Officers remain concerned at this decision as there was only minimal analysis provided as to why the LGO believed the Council to be at fault. Indeed, using the logic applied here any council Building Control department could be at fault on any occasion they didn't inspect a part of a structure. This is clearly not tenable and to quote the LGO's own advice, Building Control Inspectors are not Clerks of Works

Nevertheless the Council has reviewed Building Control procedures and made a number of improvements to process.

#### **Complaint 4**

The District Council wrongly told the County Council that the complainant did not need planning permission for a dropped kerb and hardstanding. If the District Council had correctly told the County Council that Mrs B needed planning permission for the dropped kerb and hardstanding, the County Council would not have approved Mrs B's application. She would then not have incurred costs arranging for the works to be carried out

#### **LGO Decision**

The LGO uphold Mrs B's complaint. There was fault by the District Council which caused injustice to Mrs B. The Council's agreement to pay Mrs B £50 towards the cost of hiring the digger and £100 to recognise her distress and her time and trouble pursuing the matter is sufficient to remedy her injustice.

#### **Lesson Learnt**

There seems to be some confusion in this analysis, between planning permission for a dropped kerb and that for a hardstanding. Whilst not requiring planning permission, the provision of a dropped kerb does require the consent of the County Council as highway authority. The subsequent advice that planning permission was required arose as the proposed development subsequently included the provision of an area of hardstanding to provide off street parking associated with the property. It is the area of hardstanding and the change of use of this land from highway land, which required planning permission.

In terms of improvements carried out, the council has reviewed and revised procedures so the Council is more joined up with the county on responding to access queries wherever they first arrive and in whichever organisation. There is now a specific form and process for customers to fill out so that advice can be given and as such officers will direct such customers to this form (available on the website).

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 This is an Annual report and provides members with information with regard to the number of complaints received by the ombudsman against the Council, the decisions regarding complaints and the lessons learnt.

## **5.0 Consultation**

Head of Development Management comments included within report

## **6.0 Alternative Options and Reasons for Rejection**

6.1 The following alternative options have been identified and rejected for the reasons as set out below.

None

## **7.0 Implications**

### **Financial and Resource Implications**

7.1 There are no financial implications arising from this report. All payments made to complainants have been met from within existing service budgets.

Comments checked by:

Sanjay Sharma, Interim Head of Finance

[Sanjay.Sharma@cherwellandsouthnorthants.gov.uk](mailto:Sanjay.Sharma@cherwellandsouthnorthants.gov.uk)

### **Legal Implications**

7.2 Legal advice is contained within the report.

Comments checked by:

James Doble, Assistant Director Transformational Governance

[James.doble@cherwellandsouthnorthants.gov.uk](mailto:James.doble@cherwellandsouthnorthants.gov.uk)

### **Risk Implications**

7.3 Through the implementation of lessons learnt from LGO decisions measures can be put in place to help prevent similar issues occurring in the future and therefore mitigating risk to the council.

Comments checked by:

Louise Tustian, Team Leader, Strategic Intelligence & Insight Team

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## **8.0 Decision Information**

### **Wards Affected**

All

### **Links to Corporate Plan and Policy Framework**

Sound budgets and customer focused council

## Lead Councillor

Councillor Barry Wood, Leader of the Council

## Document Information

<b>Appendix No</b>	<b>Title</b>
None	None
<b>Background Papers</b>	
None	
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