

# Planning Committee

## Report upon Complaint to the Local Government Ombudsman

19 November 2009

### Report of Head of Legal and Democratic Services and Head of Development Control and Major Developments

#### PURPOSE OF REPORT

To notify members of the details of a complaint to the Local Government Ombudsman arising from the Council's maladministration and recommend payment of compensation.

This report is public

#### Recommendations

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The meeting is recommended:

- (1) To agree that £11,274.35 compensation be paid to the complainants.
- (2) To note that the Head of Development Control and Major Developments will write to the complainants apologising for the Council's error and the stress and inconvenience caused.
- (3) To recommend the Executive make budgets available to support the action as set out above via a Supplementary Revenue Estimate of £11,274.35 to be funded from Development Control Reserve.

#### Executive Summary

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##### Introduction

- 1.1 The Local Government Ombudsman has investigated a complaint by Mr A Webster on behalf of complainants Mr Whitehead and Ms Simons of the Marlborough Arms, Gatteridge Street, Banbury. The complainants consider that they and their agents were misled by the Council about the need for conservation area consent for the demolition of the Marlborough Arms once the conservation area had

been extended to include that location. They were led to believe that conservation area consent for demolition was not required and proceeded on that basis.

- 1.2 The complainants advised the Ombudsman that that they incurred estimated losses of some £77,444.35 wholly attributable to failings by Cherwell District Council arising from the aborted sale of the pub and purchase of a new home, and that they also considered that the Council should compensate them for the loss of value of the public house of £325,000, (being the difference between its value at the time of the abortive sale in 2007 when contracts were exchanged for £500,000 to its current value of £175,000).
- 1.3 Officers have considered the allegations and agree that an error has been made, but consider that the Council can only be held liable for losses incurred by the complainants which are directly attributable to the error. The remaining losses are attributable to the developer who withdrew from the purchase of the property.
- 1.4 In the circumstances officers have accepted maladministration and made an offer (subject to agreement by the Planning Committee) to pay £11,274.35 compensation to the complainants. This has been notified to the Ombudsman who considers that payment of this amount would provide a satisfactory settlement of the complaint.

### **Proposals**

- 1.5 Officers are proposing that the Council pay the complainants £11,274.35. This is made up of £8,774.35 in reimbursement of the complainants' costs incurred in relation to the reserved matters planning fee, barrister's opinion and architect's fees, together with £2,500.00 for the stress and inconvenience caused.

### **Conclusion**

- 1.6 Officers were incorrect in their opinion that conservation area consent was not required for demolition of the Marlborough Arms following its inclusion in the extended conservation area and should have required an application for conservation area consent.
- 1.7 Following investigation into the complaint the Ombudsman agreed that the Council could only be held liable for the complainants' costs which flowed directly from the Council's officers' mistake.
- 1.8 The developer's breach of contract superseded the Council's officers' mistake and therefore they should be held responsible in law for all the remaining losses.

- 1.9 In reviewing the case the following outcomes have been identified;
- Officers of the Council should not alter, amend or complete the planning application forms on behalf of the applicant. It is the applicant's responsibility to complete the forms, whilst officers can still advise it is not appropriate for officers to fill in the forms for the applicant or agent. If a customer has special needs with regard to the planning process then they can be directed to Planning Aid.
  - When determining the extent of a permission the written description of the development should not be relied upon. Reference should always be made to the terms of the application and the related plan numbers. If there is any doubt over the development description, suitable planning conditions may be applied.
  - The Council reviewed its report format and signing off arrangements prior to the ombudsman case and as such the existing arrangements are robust and consist of one view from the Local Planning Authority. The report format for delegated applications is consistent with Planning Committee reports.

Due to the nature of planning and the timescales involved similar decisions have to be taken by planning officers on a daily basis and it is highly unusual for the advice given to be incorrect. It is not practical or cost effective to seek legal advice on every occasion. This is only sought when a complex matter of law has been identified.

## **Background Information**

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- 2.1 Outline planning permission 02/02504/OUT was granted in October 2002 for development described as "Demolition of public house and erection of 13 No flats and car parking provisions". This permission reserved all matters for approval at a later date. The development could not be commenced until these reserved matters were approved.
- 2.2 The report to North Area Planning Committee written at the time stated that as the building was not listed and was outside the conservation area the Council had little or no control over its demolition.
- 2.3 Planning Application 05/00777/OUT for variation of condition 2 of outline permission 02/02504/OUT to allow an extension of time for a reserved matters application to be received was withdrawn.
- 2.4 On 6 October 2006 a Planning Application was received initially for "Renewal of 02/02504/OUT Demolition of Public House and erection of 13 No flats and car parking provisions". However the deadline for submitting a reserved matters application under Planning Permission 02/02504/OUT was 7 October 2006. Given the fact that the detail of

the submission was consistent with that of a reserved matters application, it was considered by planning staff that it made much more sense for the application to be dealt with as a reserved matters application, particularly as it had been submitted within the relevant timescales. As a result a technical member of staff within the planning registration team, following advice from planning officers, and as far as can be recalled, following a telephone conversation with the applicant's agent, altered the application form and registered the application as Reserved Matters Application 06/01980/REM.

- 2.5 Officers were mindful that outline planning permission had been granted before the designation of the extended Conservation Area in 2004 which brought the site into the Conservation Area and therefore formed the opinion that a related reserved matters application did not require conservation area consent.
- 2.6 Reserved Matters Application 06/01980/REM was granted in January 2007. In his assessment of the application the Area Planning Officer stated that "The fact that since the original grant of consent the area has been designated a conservation area does not change the fact that the 2003 consent remains valid and can be implemented".
- 2.7 On 20 September 2007 the complainants exchanged contracts with a developer for the sale of the Marlborough Arms, with completion scheduled to take place on 21 January 2008.
- 2.8 On 30 October 2007 the Head of Development Control and Major Developments received a letter from Anthony Rickett Architects Ltd, acting for the developer, asking for confirmation that the Marlborough Arms could be demolished without conservation area consent.
- 2.9 As a result the Head of Development Control and Major Developments sought advice for Council's Legal Services Department who advised that conservation area consent was required. Anthony Rickett Architects Ltd were advised in writing of the Council's revised position.
- 2.10 On 15 February 2008 Conservation Area Consent Application 07//02544/CAC was received by the Council. Permission was subsequently refused and an appeal dismissed.
- 2.11 The developer defaulted on the completion of their purchase of the Marlborough Arms. The complainants served a notice to complete but this was not complied with.
- 2.12 The complainants' solicitors advised them that the developer was in breach of contract but advised against pursuing them for costs as the company had little or no assets.
- 2.13 The complainants then sought to recover their losses from the Council through a complaint to the Local Government Ombudsman.

## **Key Issues for Consideration/Reasons for Decision and Options**

- 3.1 Officers have concluded that the Council is guilty of maladministration in this instance and consider that the Council should pay compensation to the complainants of £11,274.35
- 3.2 The Local Government Ombudsman considers payment of the proposed compensation of £11,274.35 to be reasonable.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

- Option One**                      Pay £11,274.35 compensation to the complainants.
- Option Two**                      Refuse to pay compensation, which would result in the Ombudsman producing a full report with the associated adverse publicity for the Council.

## **Implications**

**Financial:**                      There is no financial provision for the proposed compensation and therefore it will have to be funded from the Development Control Reserve via a Supplementary Revenue Estimate.

Comments checked by Eric Meadows, Service Accountant, PH&E 01295 221552

**Risk Management:**                      The Ombudsman has found the Council guilty of maladministration and this has been accepted by officers. In the circumstances failure to pay compensation in respect of the complainants' costs arising directly from the Council's errors would have a damaging affect on the Council's reputation. The Ombudsman would proceed to write a full report recommending payment of compensation at a level he considers appropriate. Again the Council do not have to follow the Ombudsman's recommendation but it would damage the Council's reputation if it failed to do so.

Comments checked by Rosemary Watts, Risk Management and Insurance Manager 01295 221566

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**Wards Affected**

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Banbury: Grimsbury & Castle

**Document Information**

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