

STANDARDS COMMITTEE – 14TH JUNE 2006

SUBJECT: REPORT FROM PUBLIC SERVICES OMBUDSMAN FOR WALES

REPORT BY: MONITORING OFFICER

1. PURPOSE OF REPORT

- 1.1 To consider a report from the Public Services Ombudsman for Wales on a maladministration complaint made against Caerphilly County Borough Council, and to make recommendations to the Cabinet or Council as appropriate.

2. LINKS TO STRATEGY

- 2.1 The authority is under a statutory duty to consider reports from the Ombudsman and to give effect to their recommendations. The duty to oversee this is within the terms of reference of this committee.

3. THE REPORT

- 3.1 Since the 1 April 2006 the Public Services Ombudsman for Wales (“the Ombudsman”) has had jurisdiction under the Public Services Ombudsman (Wales) Act 2005. This Act has superseded but not completely repealed the previous legislation (Local Government Act 1974) and deals with maladministration complaints made to the Ombudsman.
- 3.2 There are two forms of report - under Section 16 which is the form of report which needs to be formally considered by the authority and Section 21 where the Ombudsman feels that a public report is not required and the matter has been satisfactorily resolved.
- 3.3 This report before members is in relation to an Ombudsman report under S.16 and the report is attached at Appendix 1.
- 3.4 The report needs to be formally considered and published. The report has been available for public inspection (and available on the Council’s website) since the 1 June 2006.
- 3.5 An earlier decision of the Council was that if any payment is recommended under a maladministration finding this committee should make a recommendation and then oversee any other issues in relation to the maladministration complaint. It will be necessary for this committee
- if its view is that the Ombudsman’s report be accepted, to recommend to the Cabinet;
 - if its view is to not accept the Ombudsman’s recommendations then the recommendation will be to the full Council.
- 3.6 The maladministration complaint arose from the development of four houses next to a petrol filling station. The Ombudsman, as is normal, does not identify the location or the individuals involved and this committee must respect that approach, but the issue of concerns raised by the owner of the petrol filling station have received wide publicity including a feature on a

television programme.

- 3.7 The circumstances of the complaint are set out in considerable detail in the Ombudsman's report and members are referred to the report in the appendix.
- 3.8 Officers have had concerns about the findings, not least because the Ombudsman's report has been issued based upon correspondence exchanged between the Council and the Ombudsman's office and telephone discussions with officers, but the usual formal interviews with staff did not take place. This is a feature of the new investigative arrangements under the 2005 legislation and officers will need to be aware of this change for the future, to ensure that initial replies to the Ombudsman when a complaint is received, are comprehensive.
- 3.9 Officers are concerned by the Ombudsman's recommendations and conclusions, to the extent that the unusual step of asking for a meeting to discuss the reasoning leading to the Ombudsman's conclusion was taken. This was declined by the Ombudsman because he was satisfied that his conclusion was correct because of the following features:-
- (a) that the authority considered a modification order;
 - (b) there were alterations on site to include the flash wall with the allied S.106 agreement;
 - (c) the procedure was amended in relation to the petroleum officer when a proposed development is adjacent to a petrol filling station;
 - (d) the relevance of consideration of the relationship of the tanks with the houses as a material consideration.
- 3.10 The view of officers is that development control is a complicated area with an increasing number of material considerations, to which now must be added the proximity of petrol tanks to a proposed development. As a result of this case officers have researched the position and have not found any other instances of this proximity being considered. There are numerous examples of houses located next to petrol filling stations and in planning terms the two land uses are acceptable next to each other. There is other legislation that controls activities at petrol stations and officers feel that it is unfair to criticise the local planning authority for failing to take into account a matter that is not usually considered through the planning process.
- 3.11 The Ombudsman has not criticised the actions undertaken by the local planning authority since the complainant raised his concerns and the Chief Planning Officer comments that in his view the complainant had two opportunities to write to the local planning authority to express his concerns but did not do so. On this particular point members will see that the Ombudsman accepts the complainant's statement that he attended the Planning office despite there being no evidence in the Department of this happening, and separately that the consultation letters did not reach him, despite evidence that they were sent.
- 3.12 The Chief Planning Officer comments that the Authority has put considerable time and resource into addressing the concerns of the complainant. One possible avenue was to make a modification order of the planning permission for the houses. This would have been extremely costly for the authority but a suitable alternative arrangement has been negotiated and carried out on site, which does not involve any additional cost to the authority.
- 3.13 The significant criticism in the Ombudsman's report (paragraph 14) was that the authority had inadequately considered as part of the planning application the proximity of the application site to the petrol storage tanks. While this has not previously been the practice, this Council has amended its process to take into account as a material consideration the fact that tanks are in close proximity to an application site. The concern of the Ombudsman has therefore already been addressed by the authority.

- 3.14 No other changes to procedure are necessary in order to avoid a repetition of a case of this sort.
- 3.15 There therefore remains the two recommendations of the Ombudsman:-
- (a) that the Council confirms to the complainant the arrangements made on site (paragraph 19);
 - (b) that the authority apologises to the complainant and pays him a sum of £1,000 in recognition of the worry caused to the complainant and the time and trouble in making the complaint.
- 3.16 The Council needs to consider its response to these two recommendations. In the new legislation if an authority does not accept recommendations in a S.16 report the Ombudsman may then prepare a further report ("special report") dealing with the Council's failure and making further recommendations, and will publish that report. The Ombudsman can reclaim the costs of the special report (preparation and publishing) from the Council.
- 3.17 There is also a power under the 2005 legislation for the Ombudsman, where he is satisfied that the authority has wilfully disregarded his report without lawful excuse, to report this to the High Court where it can be dealt with as a contempt of court. That provision in the legislation has however not yet been brought into effect so is unlikely to apply to this particular case.
- 3.18 While there are concerns about the way in which the Ombudsman reached the conclusion that he did, the view of the officers involved is that in all the circumstances and given the disproportionate cost and time that would be involved in a special report, they feel, reluctantly, that the Council should agree to the Ombudsman's recommendations.

4. FINANCIAL IMPLICATIONS

- 4.1 As the report has identified there are no significant cost implications to the authority in respect of the remedial works carried out on the housing site. The payment recommended by the Ombudsman will be met from existing budgets.

5. PERSONNEL IMPLICATIONS

- 5.1 None.

6. CONSULTATIONS

- 6.1 There are no consultation responses which have not been reflected in the body of this report.

7. RECOMMENDATIONS

- (a) that the Ombudsman's report and the officers' comments be noted;
- (b) that the committee recommends to the Cabinet:-
 - (i) that the Ombudsman's report be noted and accepted;
 - (ii) that changes to practice and procedure already made will address the concerns expressed by the Ombudsman and that no further changes are needed;
 - (iii) that the Council confirms to the complainant the arrangements made under the terms of the S.106 Agreement;

- (iv) that the Council apologises to the complainant for the shortcomings in the initial planning process and offer him a payment of £1,000 in recognition of the worry caused to him about the future viability of his business and the time and trouble involved in making the complaint.

8. REASONS FOR THE RECOMMENDATIONS

- 8.1 To satisfy the Council's statutory duties under the Public Services Ombudsman (Wales) Act 2005.

9. STATUTORY POWER

- 9.1 Public Services Ombudsman (Wales) Act 2005, Local Government Act 1974. As explained in the report this is a Cabinet or a Council function dependent upon the recommendation being made by this committee. Consideration of the report and making of the recommendations is a function delegated to this committee.

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Background Papers:
None other than published documents.

Appendices:
Appendix 1 Report of Public Services Ombudsman for Wales 17 May 2006
Appendix 2 Executive Summary issued by Public Services Ombudsman for Wales