

STANDARDS COMMITTEE – 2ND OCTOBER 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 This Act has superseded but not completely repealed the previous legislation (Local Government Act 1974) and deals with maladministration complaints made to the Ombudsman.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 since the 21 September 2006 and on the Council’s website since 25 September 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 way in which the Council dealt with a planning application adjacent to the complainants’ homes. The complaint is made by a person called in the report “Ms. S” on behalf of herself and seven other neighbouring

properties. The detailed circumstances are all set out in a lengthy report from the Ombudsman and officers have looked at the report in considerable detail and have made extensive comments to the Ombudsman on a draft of the report concentrating in particular on:-

- (a) matters of fact which in the officers' view were not properly represented; and
- (b) concern that the report was looking at the planning merits of the case rather than whether the Council had followed a proper process in deciding the planning application. Some, but not all, of these comments have been incorporated into the final version of the report and officers still have concerns on certain aspects, which are detailed later in the report.

3.7 The factors which in particular led the Ombudsman to the conclusion that the authority was guilty of maladministration are:-

- (a) that the Council did not recognise the effect of the potential changes in ground levels because of development on a sloping site ; and
- (b) failed to specify in the consent the finished slab levels of houses and to attach relevant conditions to the planning permission.

3.8 Particular concerns that officers continue to have are:-

- (a) that the reference to the Council's Planning Guidance (paragraph 10) is not acknowledged as being a "guidance" document;
- (b) that the report appears to suggest that the imposition of appropriate conditions would have avoided overlooking and overshadowing completely. A development on an adjacent sloping site will inevitably overshadow and overlook; the development control process should seek to minimise this effect. Officers remain of the view that even had there been conditions on the consent about slab levels it would have been impossible to make the new properties "invisible" to the adjacent properties;
- (c) the final boundary fence (paragraph 19) was built adjacent to a rear lane. The reference to the design guide is to a fence bounding a public place e.g. a park. Photographs 3 and 4 give the impression of an overwhelming wall and fence structure but these are shown from the lane and not from the complainants' homes. Photograph 1 appears to give a misleading impression in that the fence is 2 metres high but the individual shown in the photograph is seen as being higher than it;
- (d) that while the finding of maladministration is based upon the two factors set out in paragraph 3.7 above, the Ombudsman's report would appear (paragraph 43) to have gone outside matters of process and made a valued judgement on planning matters.

3.9 There are three recommendations from the Ombudsman:-

- (a) that the Council apologises to the complainants and pays the sum of £250 to Ms. S for the time and trouble in pursuing the complaint;
- (b) that the Council obtains a valuation from the District Valuer to establish a loss of value to the complainants' properties arising from the way in which the new properties have been built compared with what might have been the case had there been a condition on the consent controlling slab levels, and then pay those amounts to the complainants;
- (c) that staff in the Planning Service are reminded of the importance of identifying planning applications that may result in changes to ground or slab levels and give

specific consideration to the need to include conditions to control this.

- 3.10 The Council needs to consider its response to these 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.
- 3.11 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.
- 3.12 In relation to recommendation (a), albeit that there are concerns about some aspects of the report, officers accept that there were shortcomings in the process of dealing with the application (albeit that this might not in the end have produced any different slab levels in the final development) and recommend the acceptance of the Ombudsman's recommendations.
- 3.13 In relation to recommendation (b), there are concerns about how precisely the District Valuer is to be instructed given that there needs to be an exercise to establish how the properties might have been built "had the Council secured development in accordance with its own supplementary planning guidance and development brief" (paragraph 44). There will need to be further discussion with the District Valuer to establish this in more detail.
- 3.14 In relation to recommendation (c), the Ombudsman's report (paragraphs 30 to 36) shows the steps that are already being taken to address this issue. The Ombudsman's recommendation can be accommodated as part of that work.

4. FINANCIAL IMPLICATIONS

- 4.1 The payment for the "time and trouble" element will be met from existing budgets. There may be additional budgetary implications in respect of the outcome of the approach to the District Valuer and the funding of any sum under this heading will need to be reviewed further at the time.

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 the Council apologises to the complainant for the shortcomings identified in the Ombudsman's report and makes a payment of £250 to Ms. S for the time and trouble in pursuing the complaint;

- (iii) that the recommendation of reference to the District Valuer and payment of any subsequent compensation be agreed, subject to the clarification of the detailed instructions to be given to the District Valuer;
- (iv) that the Ombudsman's recommendations in relation to future procedures be accepted, and incorporated into departmental procedures in the Planning Service.

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.

Author: Ian G. Medicott, Monitoring Officer/Corporate Solicitor Ext. 4294
medlii@caerphilly.gov.uk

Consultees: Director of the Environment; Chief Planning Officer, Cabinet Member for Policy and Resources, Chair - Standards Committee, Head of Corporate Finance

Background Papers:
None other than published documents.

Appendices:
Appendix 1 Report of Public Services Ombudsman for Wales 4 September 2006