

THE OVERVIEW AND SCRUTINY COMMITTEE

12 SEPTEMBER 2016

ANNUAL REVIEW OF COMPLAINTS RECEIVED BY THE COUNCIL 2015/16

REPORT OF HEAD OF POLICY AND PROJECTS

Contact Officer: Simon Howson Tel: 01962 848 104

Email:showson@winchester.gov.uk

REFERENCES:

OS130 Annual Complaints Report 2014/15, 14 September 2015

EXECUTIVE SUMMARY:

This report summarises the various complaints that were received by the Council and recorded on the corporate complaints system during the year to 31 March 2016.

The report also provides details on the complaints and enquiries received by the Local Government Ombudsman, and the conclusions reached following their investigations.

Information specific to individual authorities including complaints referred to the Ombudsman, as well as the publication of the Ombudsman decision and decision statements, by category or authority can be found on the LGO website; www.lgo.org.uk

RECOMMENDATION:

That the report be noted and that Members raise any issues arising from the complaints detailed in the report that they wish to investigate further.

THE OVERVIEW AND SCRUTINY COMMITTEE12 SEPTEMBER 2016ANNUAL REVIEW OF COMPLAINTS RECEIVED BY THE COUNCIL 2015/16REPORT OF HEAD OF POLICY AND PROJECTSDETAIL:1. Introduction

- 1.1 This report provides details of the complaints received against the City Council during the period 1 April 2015 to 31 March 2016, including a summary of complaints and enquiries received by the Local Government Ombudsman (LGO) during the same period.
- 1.2 The table below shows the number of enquiries and complaints made to the LGO that were settled during 2015/16. Figures for 2014/15 have been included in brackets alongside the 2015/16 figures.
- 1.3 When considering these figures it should be noted that in particular the figures for 2015/16 include a number of general enquiries to the Ombudsman, some by telephone where the Ombudsman has been able to give advice without the need for any actual investigation. These enquiries are often received and decided or responded to on the same day; however they are still classified as decisions.
- 1.4 These enquiries are often made to the Ombudsman without the knowledge of the Council and therefore the Council's records do not match those of the Ombudsman. For this reason it has not been possible to reconcile the two sets of records.
- 1.5 The number of upheld cases by the Ombudsman has increased in 2015/16 by one to three cases. Full details of the three upheld cases are given in Appendix 1 of this report.
- 1.6 LGO – Local Authority Report – Winchester City Council
For the year ending 31 March 2016 (2014/15 figures in brackets)

Complaints and enquiries received by the LGO by service area

Benefits and Tax	Corporate and other services	Environmental services and public protection	Highways and transport	Housing	Planning and development	Total
6 (0)	3 (2)	2 (4)	1 (2)	5 (5)	17 (9)	34 (22)

Detailed investigations carried out		Advice Given	Closed after initial enquiries	Incomplete / Invalid	Referred back for local resolution	Total
Upheld	Not Upheld					
3 (2)	2 (2)	5 (2)	6 (8)	2 (2)	13 (6)	31 (22)

- 1.7 The table above shows that during the year 2015/2016 there were three complaints upheld by the Local Government Ombudsman. An upheld complaint is one where the Ombudsman decided that an authority has been at fault in how it acted, and that this fault may or may not have caused an injustice to the complainant, or where an authority has accepted that it needs to remedy the complaint before the LGO make a finding on fault. If the Council has decided that there was fault and it caused an injustice to the complainant, usually the Ombudsman will have recommended that the authority take some action to address it.
- 1.8 Full details relating to the three upheld complaints and the Ombudsman's final decision is attached to this report as Appendix 1
2. Council Complaints recording system
- 2.1 As of October 2014, the Council migrated to using the Covalent Performance Management system to record, manage and report complaints.
- 2.2 The Covalent system offers a purpose made feedback module for the recording and managing of complaints, FOI requests and compliments rather than the previously used in-house built database system.
- 2.3 The Covalent system also provides a number of advantages to the Council over the previous system. These include a more robust approach to the management of complaints and FOI requests as well as having the functionality to analyse and report complaints by a number of different ways including by complaint type, complaint source and service.
3. Customer complaints recorded on the Council complaints system
- 3.1 During the financial year 2015/16 there was a reduction of 40% in the overall number of complaints recorded across both complaints systems when compared to the previous year. A total of 269 complaints were recorded during 2015/16 and 452 in 2014/15.

- 3.2 The following table compares the total number of complaints recorded for the last five years.

Year	2011/12	2012/13	2013/14	2014/15	2015/16
No. of complaints recorder	509	628	611	452	269

- 3.3 The complaints recorded during the period April 2012 to March 2016 can be analysed by service area as follows:

Service Area	2012/13	2013/14	2014/15	2015/16
Building Control	0	7	0	0
Parking Services & CCTV	67	49	43	20
Community Safety & Neighbourhood Services	0	0	1	0
Corporate Communications	0	0	0	1
Corporate Management Team	27	31	5	1
Cultural Services	4	5	1	0
Customer Services	3	6	7	0
Engineering & Transport	0	0	16	1
Environment & Licensing	0	0	23	12
Estates	11	8	5	0
Historic Environment	0	0	1	0
Finance	1	3	3	0
Housing Services	151	185	124	104
I M & T	3	2	0	1
Joint Client (Waste)	197	183	102	33
Landscape & Open Spaces	0	0	9	6
Legal & Democratic Services	10	6	10	5
Organisational Development	2	0	1	0
Partnerships & Communication	2	2	0	0
Performance & Scrutiny	1	0	0	0
Development Management	88	74	61	57
Policy and Projects	0	0	0	1
Revenues	54	49	27	25
Sport & Physical Recreation	0	0	1	1
Strategic Planning	3	1	12	1
TOTAL	624	611	452	269

- 3.4 Complaints recorded against Corporate Management Team during the years 2012/13 and 2013/14 include requests for information from constituents via the local Member of Parliament. As these are not complaints, they are now recorded separately on the Covalent system. There were 110 MP requests for information of the Council during the period 1 October 2014 to 31 March 2015 and 123 during the period 1 April 2015 to 31 March 2016. Even making adjustments to the figures for the last two years, so that they are comparable

to earlier years, it is evident that the number of complaints is falling which is an encouraging trend.

- 3.5 It should be noted that whilst the recorded complaints by the LGO regarding Development Management increased from 9 to 17 just 2 were upheld (one only in part) and the number of complaints received by the Council fell from 61 to 57 which continues the downward trend of the last four years. Planning is one of the most complex and high volume areas of Council business and the number of complaints and LGO cases is an extremely small percentage of the total cases handled. .
- 3.6 As well as reporting complaints by team or service, by using the Covalent system it is now possible to analyse complaints by type. This brings together complaints across services and gives a better insight into the reasons for the complaints.
- 3.7 The following table provides an analysis of the complaints that were recorded onto Covalent for the period 1 October 2015 to 31 March 2016.

Complaint Type	Number recorded
Administration – All other	11
Administration – Liability for Charges	12
Administration – Recovery Action	2
Administration – Wording of Council Letters	3
General Services – Contractor	14
General Services – Council Decision	26
General Services – Council Policy	10
General Services – Council Procedure	8
General Services – Delay in Service	13
General Services – Enforcement Action	11
General Services – Lack of Information	12
General Services – Missed Cyclical Service	9
General Services – Other	9
Housing Services – Allocations	3
Housing Services – Estate Services	2
Housing Services – Repairs and Maintenance	78
Housing Services – Tenancy Management	12
Premises Related	8
Staff Related	11
Other	15
TOTAL	269

- 3.8 The area with the largest number of complaints relates to Housing repairs and maintenance. However it should be noted that the Council is responsible for maintaining over 5,000 residential properties and raises over 20,000 individual repairs jobs each year. The Tenant Satisfaction Survey last undertaken in May 2015 highlighted that 81% of tenants were satisfied with the Repairs and

Maintenance service they had received (CAB2705(Housing) 30 June 2015 refers).

- 3.9 The second largest area of complaint relates to Council Decisions and these predominantly relate to complaints about planning decisions.

OTHER CONSIDERATIONS:

4. COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO :)

- 4.1 The Council strives to be efficient and effective and to offer excellent customer services in its local communities. Enhanced information and learning from complaints and their causes will support the Council to achieve this objective.

5. RESOURCE IMPLICATIONS

- 5.1 There are no resource implications arising from this report.

6. RISK MANAGEMENT ISSUES

- 6.1 There are no specific risks associated with the recommendations put forward in this report.

BACKGROUND DOCUMENTS

Analysis of complaints from the Local Government Ombudsman is held on file by the Business Management Team. Note: detailed papers are exempt as they contain personal information.

APPENDICES

- Appendix 1 Details relating to the three upheld complaints and the Ombudsman's final decision.

Details relating to the three upheld complaints and Ombudsman's final decision

Case 1

The Ombudsman's final decision:

Summary: the Council was not at fault in the way in which it provided Mr and Mrs J with pre-application planning advice. But, it was at fault in allowing them to commission a sustainable development report when officers later realised that their scheme might not be acceptable. This fault caused them the injustice of incurring an unnecessary cost.

The complaint

The complainants, Mr and Mrs J complained that in responding to their pre-application enquiry, the Council did not properly examine their development proposals for extending their home, or the impact these proposals would have on the surrounding area. Consequently the Council did not give them any indication that it would be unable to approve their proposals until they had needlessly spent a large sum of money on additional surveys and reports, as well as their architect's fees.

How the Ombudsman considered the complaint

As part of the investigation, I have considered the information that Mr and Mrs J provided in support of their complaint, together with that provided by the Council. I have written to Mr and Mrs J and the Council with my draft decision and considered their comments.

What I found

The guidance says that:

- pre-application advice will provide an understanding of relevant planning policies, and of relevant material planning considerations;
- applicants should appraise the site to establish its characteristics, and to identify constraints and opportunities. They will need to carry out a contextual analysis and survey, which will form the basis of the design and access statement;
- applicants should also undertake independent consultation with interested parties such as local residents;
- officers will give objective and accurate pre-application advice without prejudice to the Council's consideration of a formal planning application, which will be subject to wider consultation or publicity;
- the Case Officer will carry out any appropriate internal consultation, research and analyse the site history and relevant planning policy/guidance/legislation, and carry out an initial assessment of the pre-application drawings; and
- the written response will identify the key issues the proposal raises. It will advise on relevant planning policies; on the information the applicant will need to make a formal submission, and on any amendments or alterations needed to make the proposal acceptable.

The Council's pre-application advice is available on its website

The development proposals

Mr and Mrs J proposed to demolish their existing chalet style bungalow, and to erect a two storey dwelling with a single storey link to a ground floor annexe, with associated external works.

The pre-application advice

A Planning officer made a site visit in January 2014. She did not visit neighbouring properties because pre-application advice is confidential.

The officer then issued her pre-application advice letter. This said that:

- the site fell within the City's settlement boundary where there was a presumption in favour of residential development;
- the proposed dwelling reflected the character of other dwellings in the street; but
- the submitted plans did not show the proposed new dwelling in relation to neighbouring properties. She needed to see plans showing these, and the windows in the existing dwelling;
- this was to enable her to determine the privacy issues, as she had some concerns about potential overlooking from the side windows serving the bedrooms; and
- officers gave pre-application advice without prejudice to the Council's consideration of a formal planning application which would be subject to wider consultation or publicity.

What happened

February – March 2014

In mid-February Mr and Mrs J's agent emailed the officer expressing concern that her site visit had not included an assessment of adjacent buildings and the location of windows in these. She had also not asked for additional information before providing her pre-application advice. The agent asked if a marked up site plan showing approx window locations and assumed room use would do. He asked if the officer could comment on this as part of the pre-application submission.

The officer replied that:

- the Council did not normally ask for additional plans at the pre-application advice;
- officers just commented on those plans the applicant submitted, and advised on what further information they needed to submit as part of the application;
- from her site visit she had formed the view that the applicants would need to show the proposed dwelling in its context so that she could assess privacy distances etc; and
- if they forwarded this information to her she would look at it before they submitted the planning application.

In mid-March the agent submitted a revised site plan showing the approximate locations of windows in adjacent dwellings and an assessment of their likely use. He also provided photographs taken from the first floor windows of Mr and Mrs J's existing dwelling.

A few days later he emailed the officer asking if they could assume that the impact on the surrounding area would still be acceptable. The officer responded that she hoped to take a positive view on privacy. But, she would reserve judgement until she had received the application and visited the site.

September - December 2014

The agent submitted a formal planning application on behalf of Mr and Mrs J at the end of September. Shortly afterwards they provided an environmental impact assessment report.

A month later a number of neighbours responded to the Council's neighbour notification exercise. They objected to the proposals on the grounds of the excessive height and proximity of the proposed new dwelling; the overbearing impact this would have; the degree of overlooking they would experience; and loss of privacy and daylight.

Late in November the officer advised Mr and Mrs J's agent that they would need to submit a sustainable development report.

The next day the officer made site visits to adjacent neighbours. She noted in particular that two neighbouring gardens were small and would suffer an overbearing impact, and loss of light and privacy.

Towards the end of the month the officer responded to the agent providing advice in relation to the required sustainable development report. Mr and Mrs J said that they subsequently paid a fee for the report.

Early in December the officer discussed the development proposals with her colleagues. From talking through the issues and viewing the photographs they agreed that there would be a detrimental impact on neighbouring residents.

Shortly afterwards the officer emailed Mr and Mrs J's agent. She:

- said she had now made site visits to the application site and surrounding properties. She had also conferred with colleagues;
- said that now she had been able to do this, she had concerns about overlooking, loss of sunlight and an overbearing impact on garden belonging to two neighbouring properties; and
- suggested that Mr and Mrs J might wish to withdraw their application, and to re-submit this. In doing so, they would have to consider significantly reducing the height and bulk of the proposed dwelling and re-orientation of the windows; or
- they might prefer her to refuse their current application to enable them to appeal.

The officer made a site visit during the following week, when she repeated her views and her advice about resubmitting or appealing the application.

Mr and Mrs J withdrew their planning application in late December.

The Council's complaint responses

In response to Mr and Mrs J's complaints, senior officers said that:

- officers' pre-application advice was always without prejudice and non-binding;
- it could not iron out beforehand all the potential problems that a full application might present;
- officers could not visit neighbours' properties at this stage, or foresee the objections they might raise;
- the officer they dealt with had said that the privacy/overlooking issues would need to be taken into account, although she was cautiously optimistic. This was not the same as saying there would be no problem; and

Mr and Mrs J could have submitted a revised scheme within one year, without having to pay a further fee. It was still open to them to do this. If the Council refused their revised scheme, they would still have a right of appeal.

Was there fault, and if so, did this cause injustice requiring a remedy?

I do not consider that the Council was at fault in relation to the pre-application advice it provided because:

- it was open to Mr and Mrs J and their agent to take into account the Council's guidance in relation to this;
- the way in which the officer in question provided her advice was consistent with this guidance;
- she always made it clear that she was reserving judgment in relation to the overlooking and privacy issues;
- objections on these grounds were inextricably linked with height of the proposed development and how overbearing it would appear; and
- the Council was correct in its view that it gave the pre-application advice on a without prejudice basis, and that this was not binding.

But, I do consider that there was an element of fault in allowing Mr and Mrs J and their agent to commission a sustainable development report. The officer was still advising them how to go about this after she had received the neighbouring residents' objections and visited their properties. I do not accept that she had sufficiently good reason not to alert them to her concerns only because she had not discussed these with colleagues.

I consider that this fault caused injustice to Mr and Mrs J because they incurred a cost that they need not have done. I have noted the Council's view that they could have used the report in support of a revised scheme. But, a reduced scheme would not have suited their purposes. This was why they had sought pre-application advice

The Council's comments

The Council told me that:

- it was clear from the officer's pre-application advice that she did have concerns about potential overlooking from the side windows serving the proposed bedrooms;
- in commenting on the additional plans the agent submitted in February 2014, the officer said it was likely that a positive view would be taken on privacy. But, she would err on the side of caution until she had received the planning application and been able to visit the neighbouring properties;
- it was not clear from the original site visit, or the plans and photographs the agent had submitted, what the relationship was between the garden of one neighbouring property and Mr and Mrs J's dwelling;
- the photographs showed only the level of overlooking from the windows in Mr and Mrs J's much lower chalet bungalow; and
- the officer had not advised the agent of her concerns about loss of privacy and overlooking when she emailed him in late November. This was because she wished to discuss matters with colleagues first. Unfortunately, the opportunity to do this did not arise until two weeks later.

Agreed Action

The Council has agreed to my proposal that it should reimburse Mr and Mrs J for the costs of £390 they incurred in commissioning a sustainable development report

Decision

For the reasons I have explained, I have upheld Mr and Mrs J's complaint in part

Case 2

The Ombudsman's final decision:

Summary: The Council has accepted fault in the way it assessed a planning application, but the fault has not caused significant injustice to Mr M. There was no fault in the way the Council considered enforcement action. There was delay in the Council's responses to Mr M's complaints. The Council's apologies are an adequate remedy.

The complaint

Mr M complains that the Council

- mismanaged the planning process and gave incorrect information to the Planning Committee,
- failed to carry out planning enforcement action,
- failed to respond in time to his complaint.

How the Ombudsman considered the complaint

I considered the information Mr M provided in his complaints to the Council and the Ombudsman. I have reviewed the Council's responses, the relevant planning applications and the Planning Committee papers and minutes. I gave Mr M and the Council an opportunity to comment on my draft decision.

What I found

Under the Town and Country Planning Act 1990, councils have the power to decide if planning applications should be approved, refused or approved subject to planning conditions.

Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid material planning reasons.

Material considerations relate to the use and development of land in the public interest, and not to private considerations such as the applicant's personal conduct, covenants or reduction in the value of a property. Material considerations include issues such as overlooking, traffic generation and noise. It is for the decision maker to decide the weight to be given to any material consideration in determining a planning application.

Councils can take enforcement action if they find planning rules have been breached. However councils do not have to take enforcement action just because there has been a breach of planning control. Government guidance says:

"Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control." (National Planning Policy Framework 2012, paragraph 207)

What happened

In early 2014 Mr M's neighbour submitted a planning application for removal of an existing garage and erection of a single storey side and rear extension. The Council refused the application due to its size, height, siting and design, resulting in an overbearing form of development and impact on Mr M's property.

The application was resubmitted, with the development moved away from the boundary and reduced in height. Mr M objected to the application. He considered that, despite the changes, it was still overbearing and the height reduction did not change the impact on his property.

The Planning Committee considered and approved the application. At the meeting it was confirmed the height of the extension wall nearest Mr M's property would be "approximately 2.9m", 0.2m lower than the original refused application.

Mr M complained to the Council about the way the application had been handled. He also complained the Planning Committee did not have the correct information; the height of the wall would in fact be 2.99m. The Council considered the Committee had taken the decision in full knowledge of the facts and the height difference was not material.

After building work started, Mr M raised concerns the extension was closer to his boundary and the wall higher than permitted.

The Council investigated. It found the approved plans showed the boundary incorrectly. The building was therefore up to 19cm closer to Mr M's property than expected but was in the approved location.

The Council measured the wall as 3.2m high. Further investigation revealed that the plan used by the officers to inform the Planning Committee had not been printed exactly to scale. The Committee thought it was agreeing to an extension that was approximately 2.9m high near Mr M's property. In fact the approved plans – when printed correctly – gave a height of 3.2m.

Mr M complained a second time. The Council admitted the error and apologised to Mr M. It also amended its process to check the scales of printed plans.

Mr M asked the Council to take enforcement action so the extension wall would be built 0.2m lower than the original refused plans, as set out in the Committee report. The Council said it could not do so as the building was in line with the approved plan. Mr M complained to the Ombudsman

My findings

Mr M complained the Council gave incorrect information to the Planning Committee. The planning officer wrote his report in good faith, but the printing error led to the Committee being given the wrong information about the height of the extension. This is fault, which the Council accepts and has apologised for.

I have looked at the injustice caused to Mr M. He says the neighbour's extension has an overbearing nature and an impact on his residential amenity. When considering the amended planning application the Committee considered the impact on Mr M's property. The height of the extension wall was not the only factor. In addition, the difference between the height of the wall that Mr M was expecting and the actual height is 21cm. There is no significant injustice to Mr M.

There was no fault in the way the Council considered enforcement action. Although the Committee was given wrong information, the extension was built to the approved plans. There was no breach of planning control so the Council had no grounds to take enforcement action.

Mr M also complained about delays in dealing with his complaints.

It took the Council over 9 weeks to provide its stage 2 response to Mr M's first complaint. This is 5 weeks longer than set out in the Council's policy. Although Mr M chased a reply several times, I can find no evidence he was given any reason it was taking longer than usual. This is fault.

It took the Council over 13 weeks to provide its stage 2 response to Mr M's second complaint. This is 9 weeks longer than set out in the Council's policy. Although Mr M chased a reply several times, I can find no evidence he was given any reason it was taking longer than usual. This is fault.

The Council has acknowledged the delays in responding to Mr M's complaints and has apologised. This is an adequate remedy

Final Decision

The Council has accepted fault in the way it assessed a planning application, but the fault has not caused significant injustice to Mr M. There is no evidence of fault in the way the Council considered enforcement action. There was fault by the Council in the way it responded to Mr M's complaints. The Council's apologies are an adequate remedy

Case 3

The Ombudsman's final decision:

Summary: The Council's delay in responding to Mr and Mrs X's complaints about its decision to recover overpaid Council Tax benefit has not caused sufficient injustice to them to warrant the Ombudsman pursuing

How I considered this complaint

I have read the information submitted by Mr and Mrs X. I considered documents provided by the Council. I explained my draft decision to Mr and Mrs X and the Council and considered the comments received.

What I found

The Council said it had overpaid CTB to Mr and Mrs X between 2009 and 2013. It decided to recover the overpayment from them. Mr and Mrs X appealed to the Tribunal as they disagreed with the Council's decision. Mr and Mrs X were unsuccessful at their First Tribunal hearing and applied for permission to appeal to the Upper Tribunal to review the decision.

Mr and Mrs X complained to the Council in October 2015 about the Council's decision to recover the overpayment from them. They raised concerns about officers' investigations, reports, actions, presentations to the First Tribunal hearing and the Council's policy about repaying overpayments. Mr and Mrs X say they have not received an acknowledgement or response to their complaint.

The Council has now replied to Mr and Mrs X's complaint. It has responded to the concerns raised in full and apologised for the delay in replying. As Mr and Mrs X have been unsuccessful at appeal the Council considers the overpayment is repayable and will work with Mr and Mrs X to agree an acceptable repayment plan. It confirmed Mr and Mrs X have been refuse permission to appeal to the Upper Tribunal

My analysis

The Council has recognised it has not responded to Mr and Mrs X's complaint within a reasonable timescale. The delay is unfortunate and no doubt frustrating for Mr and Mrs X. However the Council has apologised for the delay. I consider the apology reasonable action for the Council to take. I see no grounds to pursue Mr and Mrs X's concerns about the delay any further. This is because while there has been some delay by the Council I do not consider it has caused sufficient injustice to Mr and Mrs X to warrant pursuing the matter further. This is especially as the Council has now replied and because of the Ombudsman cannot investigate the substance of Mr and Mrs X's complaints about overpaid CTB.

Final decision

My decision is to complete my investigation. This is because I do not consider the Council's delay in responding to their concerns about recovering overpaid CTB from

them has caused then sufficient injustice to warrant the Ombudsman pursuing the matter further.