

Committee: Scrutiny Committee

Agenda Item

Date: 2 September 2014

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Title: **Matters arising from an investigation into complaints 1) to the Local Government Ombudsman about the council's response to reports of unauthorised development at Cranwellian, in Takeley parish, and about its handling of a subsequent planning application for development of a Gypsy site in the grounds of Cranwellian, 2) to the Information Commissioner about the council's response to a request for relevant information.**

Author: Roger Harborough, Director of Public Services Item for decision

Summary

1. This report relates to matters called in for consideration by Scrutiny Committee by Councillor Rich. They concern the outcome of investigations by the Local Government Ombudsman and Information Commissioner into two related complaints.

Recommendations

2. The Scrutiny Committee determine how it should proceed to consider this matter:
 - a. The Committee as a whole conducts its own investigation.
 - b. The Committee appoints a task group with between three and seven members to conduct an investigation and report back with recommendations.
 - c. No further action is taken by the Committee.

Financial Implications

3. If any, these will be quantified in acting on the Committee's decision as to how to proceed.

Background Papers

4. The papers referred to by the author are attached to this report.

Impact

5.

Communication/Consultation	
Community Safety	
Equalities	
Health and Safety	
Human Rights/Legal Implications	There is no legal basis for any claim by the complainant for compensation against the Council. If the complainant wished to contend that the planning permission should not have been granted she should have applied for permission to quash the decision by way of judicial review. Such an application should have been made within 3 months of the issue of the decision letter. As no such application was made within time a judicial review is now statute barred.
Sustainability	
Ward-specific impacts	
Workforce/Workplace	Depending on the Committee's view as to how it should proceed, support for the scrutiny of this issue may require some re-prioritisation of time.

Situation

6. Statements were made on this matter during the time allocated for public speaking at the Council meeting on 15 July. Councillor Rich has given notice under the council's Overview and Scrutiny Procedure Rules that he wishes this matter to be placed on the agenda for this meeting.
7. There are two aspects to this matter: the first relates to the complaint to the Ombudsman and the second to the complaint to the Information Commissioner

The Ombudsman

8. The occupier of the property next door to Cranwellian and the occupier's neighbours made a complaint to the Local Government Ombudsman about the council's response to reports of unauthorised development at Cranwellian, in Takeley parish, and about its handling of a subsequent planning application for

development of a Gypsy site in the grounds of Cranwellian. A copy of his decision is attached.

9. The Ombudsman carried out a very thorough investigation which lasted 14 months and involved the examination of approximately 230 pages of text, plans and photographs. He concluded that for the most part the complaint was unfounded or related to issues that occurred too many years ago.
10. The occupier of the property next to Cranwellian and the occupier's neighbours and the council were invited to make representations on the investigator's draft report and both parties did so. The investigator made some changes in response to points made by the council.
11. The finding of fault on the part of the council related to a specific issue: whether the council should have investigated the feasibility of an effective surface water drainage system before granting planning permission subject to conditions, one of which required the details of such a system to be submitted by the applicant for approval before the development could be commenced, and then to implement the system as approved.
12. It was accepted that, with hindsight, the council should have carried out such investigations in the particular case. The Ombudsman accordingly identified the appropriate remedy as: an apology to the neighbours; notes on files about the ombudsman's concerns on drainage in relation to the site, and the need for more information than usual to inform any future decisions about the site; that planning officers be advised of this decision and his view the Council should have liaised with other agencies given the flood risk and obtained more information before deciding the application.
13. Furthermore he said that the occupier next to Cranwellian should be paid the sum of £250 and the occupier's neighbours £100 each in recognition of their loss of confidence in the system and the time and inconvenience to which they have been put in making complaints to the Council and to the Ombudsman.
14. His final decision was that the recommended action remedies the injustice arising and until the Council discharges the conditions the Ombudsman cannot consider any further injustice.
15. Ombudsman's decisions are not binding on the Council. However, if the system is to work properly then it is necessary to accept findings by the Ombudsman, and acknowledge in this case the loss of confidence in the Council undoubtedly suffered by the adjoining occupier and neighbours and the other faults identified, even if these were limited in scope.
16. The council accordingly accepted the recommendations and implemented them. In a further development, information to support the discharge of certain conditions outstanding at the time of the complaint has been judged by the council as local planning authority to be inadequate. Unless the conditions are satisfied, the planning permission cannot be implemented. It is a temporary permission to use the land until 14 December 2016.

17. The complaint covered a number of specific areas including the alleged failure to take enforcement action and the allegation that waste on the site poses a significant risk. On both of those issues the Ombudsman accepted or did not challenge the professional judgement of officers.

Conclusion on Ombudsman

18. The adjoining occupier and neighbours put their case – at considerable length - to an external arbitrator, who has made a decision which has been accepted.

The Information Commissioner

19. The adjoining occupier raised a number of requests under the Environmental Information Regulations. Certain information was redacted (ostensibly for Data Protection reasons) and the adjoining occupier complained to the Information Commissioner both on the grounds that the redactions were inappropriate and unnecessary and that we had failed to disclose all the information we held.
20. The Information Commissioner found in the council's favour and the adjoining occupier appealed to the First Tier Tribunal. About that time Mr Perry had a lengthy meeting with the adjoining occupier, a friend, and Councillor Jones at these offices. On preparing for the appeal he had acknowledged that a lot of the redactions should not have been made. With one exception however (a letter which had not been found on searching) it appeared that the council had provided all the information it had.
21. Having been provided with our final response the adjoining occupier withdrew the appeal. This was discussed by the Corporate Management Team earlier this year and we amended our policy and procedures on access to information. Mr Perry provided further training on dealing with FOIA/EIR requests with an emphasis on exemptions/exceptions. This was rolled out to all staff between February and April 2014. Importantly, this was not a requirement of the Information Commissioner but is rather a proper review of our procedures by ourselves following identification of a weakness.

Conclusion on complaint to Information Commissioner

22. The Commissioner found in the Council's favour, and not in favour of the adjoining occupier. We unilaterally altered our procedure when a weakness was drawn to our attention, which is good practice. It was not at the behest of the Commissioner.

Next steps

23. The Committee needs to determine what options are open to it and how it should proceed to consider this matter. Findings of fault on the part of the council following a complaint to the Local Government Ombudsman are few and far between, and acceptance of an investigator's recommendations has, without exception over the last 3 years, concluded the complaints, although

some complainants have sought to continue to pursue their cause. There is no precedent for the council re-opening a complaint with a view to discussing further actions when those that have been agreed and implemented already remedy the injustice arising.

Risk Analysis

24.

Risk	Likelihood	Impact	Mitigating actions
The complainant stated at the Full Council meeting that she would be claiming compensation from the council. She has been reported in the press as repeating this statement	2 Statements of intent have been made but no formal solicitor's letter prior to action has been received by the council	1 The council's insurance policy is likely to cover any compensation which may be payable	Whilst it is considered that there is no legal basis upon which the complainant could claim compensation, if a claim were to be received the matter would be referred to the council's insurers. No substantive investigation by the Committee should proceed until the claim had been disposed of.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.