

22 August 2014

Dear Councillor

SCRUTINY COMMITTEE

A meeting of the Scrutiny Committee will be held at the Council Offices, London Road, Saffron Walden on Tuesday 2 September 2014 at 7.45pm or at the conclusion of the question and answer session whichever is the earlier.

Yours faithfully

JOHN MITCHELL

Chief Executive

Commencing at 7.30 pm, there will be an opportunity of up to 15 minutes for members of the public to ask questions and make statements, subject to having given two working days prior notice

A G E N D A P A R T I

1	Apologies for absence and declarations of interest.	
2	Minutes of the meeting held on 24 June 2014 (attached).	p.4
3	Business arising.	
4	Consideration of any matter referred to the Committee in relation to call in of a decision (standing item).	
5	Responses of the Executive to reports of the Committee (standing item).	
6	Cabinet Forward Plan.	p.10
7	Scrutiny Forward Plan.	p.13

8	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.	p.15
9	Active Uttlesford sports facility provision review – Gaynor Bradley (verbal).	
10	Day centre review update – Councillor Evans.	
11	Air quality review scope – verbal.	
12	North Essex Partnership Trust (NEPT) public and mental health review scope – verbal.	
13	Any other items that the Chairman considers to be urgent.	

To: Councillors G Barker, P Davies, I Evans, **E Godwin**, S Harris, S Howell, D Morson, E Oliver, J Rich and D Watson.

Lead Officer: Adrian Webb (01799) 510421
Democratic Services Officer: Adam Rees (01799) 510548

MEETINGS AND THE PUBLIC

Members of the public are welcome to attend any of the Council's Cabinet or Committee meetings and listen to the debate. All agendas, reports and minutes can be viewed on the Council's website www.uttlesford.gov.uk.

Members of the public and representatives of parish and town councils are now permitted to speak or ask questions at any of these meetings. You will need to register with the Democratic Services Officer by midday two working days before the meeting. An explanatory leaflet has been prepared which details the procedure and is available from the Council offices at Saffron Walden.

A different scheme is applicable to meetings of the Planning Committee and you should refer to the relevant information for further details.

Please note that meetings of working groups and task groups are not held in public and the access to information rules do not apply to these meetings.

The agenda is split into two parts. Most of the business is dealt with in Part 1 which is open to the public. Part II includes items which may be discussed in the absence of the press or public, as they deal with information which is personal or sensitive for some other reason. You will be asked to leave the meeting before Part II items are discussed.

You are entitled to see any of the background papers that are listed at the end of each report.

If you want to inspect background papers or speak before a meeting please contact either Peter Snow on 01799 510430, Maggie Cox on 01799 510369, or Rebecca Dobson 01799 510433 or by fax on 01799 510550.

Agenda and Minutes are available in alternative formats and/or languages. For more information please call 01799 510510.

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- You should proceed calmly, do not run and do not use the lifts.
- Do not stop to collect personal belongings.
- Once you are outside, please make your way to the flagpole near the visitor car park. Do not wait immediately next to the building. Do not re-enter the building until told to do so.

**SCRUTINY COMMITTEE held at COUNCIL OFFICES LONDON
ROAD SAFFRON WALDEN at 7.30pm on 24 JUNE 2014**

Present: Councillor E Godwin (Chairman)
Councillors G Barker, P Davies, S Howell and D Morson

Officers Present: G Bradley (Community Partnerships Manager), A Rees (Democratic Services Support Officer), V Taylor (Business Improvement and Performance Officer) and A Webb (Director of Corporate Services).

Also Present: Councillors C Cant and J Ketteridge (Leader).

SC1 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillors I Evans, E Oliver, J Rich and D Watson.

Councillor Cant declared a non-pecuniary interest in item 9, Day Centres – scoping report, as she was a trustee of Dunmow Day Centre.

SC2 MINUTES

The minutes of the meeting held on 29 April 2014 were approved and signed as a correct record.

SC3 MATTERS ARISING

(i) SC62 – NHS England and West Essex CCG

The Business Improvement and Performance Officer said she had not heard from Mrs Manton as to whether Health authorities could ask for greater Section 106 contributions.

SC4 STANDING ITEMS

The Chairman said that she was aware of no matters referred to the Committee in relation to call in of a decision, nor any responses of the Executive to reports of the Committee.

SC5 FORWARD PLAN

The Forward Plan was noted.

SC6 SCRUTINY WORK PROGRAMME

Councillor Barker suggested that the Committee should focus more on decisions made by Cabinet. The Work Programme needed to be more flexible in order to allow for this. He asked what brief Peter Fentem was

to be given about air quality for the meeting on 14 October. The issue was often vague and emotive and it was important to provide the public with figures that were as accurate as possible.

Councillor Howell said that it was important that the Committee focussed on decisions made by the Council. He was pleased that the meeting's agenda focussed on such issues. He added that the statutory and non-statutory service list should also be added to the work programme and questioned what had happened to this review.

The Director of Corporate Services reminded the committee that it had been agreed to review Day Centres as a previous review had been undertaken by Scrutiny. He suggested that the list should be added to September's agenda in order for the next review to be decided.

In response to the points raised by Councillor Barker, the Director of Corporate Services said that key decisions were scrutinised before they went to Cabinet. The call-in process also allowed for scrutiny of Cabinet decisions when needed. The Business Improvement and Performance Officer would be requested to find out what Mr Fentem was going to say regarding air quality.

Councillor Ketteridge informed the Committee of an Air Quality Planning workshop that was to be held on 25 June. All members were welcome to attend.

The Committee discussed the proposed agenda for the meeting on 24 March 2015. Councillor Godwin suggested that the Access and Equalities Officer should be invited to speak about the Health and Wellbeing Board.

The Work Programme was noted.

SC7

ANNUAL REPORT FROM THE LEADER

Councillor Ketteridge presented the Leader's report to the Committee. He said the 2013/14 financial year had been successful. It was the seventh successive financial year that Council expenditure was within budget. For the 2012/13 financial year there was another unqualified audit. One member of the public had objected, but the Auditor had found the claim to be without foundation. In accordance with the Corporate Planning and Medium Term Financial Strategy there would be no increase in Council Tax throughout the plan period. He was proud that Council Tax had been reduced by 1% in 2013/14 and 2% in 2014/15. The Council had received the best Government financial settlement by spending power. The Council had been in correspondence with the Airports Commission. The Commission's interim report did not include Stansted in its proposals for new runway capacity. The Uttlesford Local Plan was to be submitted to the Planning Inspectorate shortly. It was still necessary to plan for Gypsy and

Traveller sites in the district. Findings of a county wide survey were being waited upon. The Council had a requirement to provide affordable housing and the waiting list for Council or Housing Association accommodation continued to grow. Due to the Council's strong financial position it was now able to begin dealing with the need for new housing. The Council's policy of requiring commercial housing developments to ensure 40% of the development was affordable housing was the only way to make a serious contribution to Social Housing stock. Ensuring future economic development was a key part of the Corporate Plan. The Local Plan provided a number of new areas for economic growth, as well as enhance existing ones. The Tour de France on 7 July would provide a significant boost in profile for the district. The Council would continue to work with neighbouring districts and play an active role in a variety of local partnerships. Democratic and Electoral Services had recently conducted the European Parliamentary Election. The amount of work undertaken to ensure the election ran smoothly was often underestimated and it was pleasing to note that Essex was the second county to declare its results. Work was now being undertaken to ensure the successful implementation of Individual Electoral Registration, as well as the various elections that would take place in May 2015. In September 2013, the Government chose to implement its "You've got the power scheme" in Uttlesford because of the progress it had made in registering Community Assets. It was satisfying to note that the Halifax Rural Areas Quality of Life Survey 2014 had stated that residents of Uttlesford enjoyed the best quality of life for any rural area in Great Britain. The Council had become well respected throughout the country and this was because of the work undertaken by the Council's officers.

The Committee discussed the Leader's comments in relation to Stansted Airport. Members agreed that although it was reassuring that the Airports Commission had not shortlisted Stansted Airport for additional runway capacity, the number of flight paths directly above Stansted were too numerous.

The Committee agreed to move to Item 11.

The Annual Report from the Leader was noted.

SC8

SPORTS FACILITY PROVISION – SCOPING REPORT

The Committee received information about the suggested terms of reference for the review into sports facility provision. The suggested terms of reference were as follows:

- To understand what facilities were available within the district and who used them.
- To understand whether if there was a shortfall in facilities

- To determine what the catchment areas were for current facilities, including those on the edge of the district.

The Community Partnerships Manager told the Committee that the Council was working with Active Essex and 1Life. The Active Uttlesford Network had been launched so that sports clubs could decide what facilities were needed. There would be sub groups for larger areas such as Saffron Walden and Great Dunmow.

The Committee were concerned by the possibility of replicating work already being undertaken by the Active Uttlesford Network. It was agreed that the review into sports facility provision would be deferred until it was possible to ascertain what the Active Uttlesford Network was likely to do.

RESOLVED that a report on Active Uttlesford be brought to the next Scrutiny meeting. The report would set out who the members of Active Uttlesford were, the planned workload and timings for completion of each element.

SC9

DAY CENTRES – SCOPING REPORT

Councillor Godwin outlined the suggested terms of reference for the review into day centres. They were as follows:

- To assess how each of the five day centres operated and what services were provided.
- To assess the usage of each centre.
- To review the locations of the centres.
- To assess what building works would be required and any likely costs.
- To evaluate the findings and formulate recommendations for each centre.

The Committee decided to establish a Task Group to assist with the review. The Task Group would comprise of Councillors Davey, Evans, Godwin and Morson.

The Committee received information from Councillor Cant about the day centre in Dunmow. She said that finding volunteers was often challenging, especially at a committee level. The day centre had been able to improve its facilities and it was important that funding continued to be made available to ensure facilities were maintained to a high standard. It was also important that the Council continued to be proactive in engaging with day centres. There had been an issue with fire alarms in the day centre and this needed to be resolved.

Councillor Barker said that in addition to the suggested terms of reference, the review should look at why the Council has day centres.

Members agreed that this should be added to the terms of reference for the review.

RESOLVED that a Task Group would be set up to review day centre provision throughout the district, to report to the meeting of the Committee in October.

The Task Group would be comprised of Councillors Evans, Godwin and Morson. Councillor Davies would act as a 'critical friend'. It would have the following terms of reference:

- To assess how each of the five day centres operated and what services were provided.
- To assess the usage of each centre.
- To review the locations of the centres.
- To assess what building works would be required and any likely costs.
- To evaluate the findings and formulate recommendations for each centre.
- To establish why the Council has day centres.

SC10

SAFFRON WALDEN MUSEUM AND CASTLE SITE DEVELOPMENT – SCOPING REPORT

The Committee were told by Councillor Morson that the review would provide on how the partnership between the Museum Management Working Group and the Museum Society. The suggested terms of reference for the review were:

- To establish how much money was being spent and where.
- To understand the two phase forward plan.

In response to a question by Councillor Barker, The Director of Corporate Services said that the castle was owned by the Council.

RESOLVED that a review into the Saffron Walden Museum and Castle site development would take place with the following terms of reference:

- To establish how much money was being spent and where.
- To understand the two phase forward plan.
- To be reassured that the underlying infrastructure of the castle is protected.

SC11

PLANNING SCOPING REPORT

The Committee discussed the stringency of planning performance indicators. Members agreed that determining the quality of work was within the remit of management and not the Scrutiny Committee. The appeals procedure also dealt sufficiently with performance indicators relating to quality. Other performance indicators were already covered by the Performance and Audit Committee.

SC12 **AMBULANCE SERVICE SCOPING REPORT**

Members agreed that the ambulance service had already been discussed sufficiently at previous meetings.

SC13 **ANY OTHER ITEMS**

The Director of Corporate Services told the Committee that the meeting on 14 October would have to be rescheduled due to a clash with the South Area Forum.

The meeting ended at 9.20pm.

**UTTLESFORD DISTRICT COUNCIL
FORWARD PLAN**

KEY DECISIONS

Decision	Decision maker	Date of decision	Documents submitted to the decision maker for consideration	Portfolio Holder	Contact officer from where the documents can be obtained
Development Sites	Cabinet	ongoing		Cllr J Redfern	Roz Millership, Assistant Director Housing and Environmental Services rmillership@uttlesford.gov.uk
Transfer of toilets to SWTC	Cabinet	17 August		Cllr Chambers	awebb@uttlesford.gov.uk
Localism Act 2011 Community Empowerment	Cabinet	Ongoing		Cllr H Rolfe	John Mitchell, Chief Executive jmitchell@uttlesford.gov.uk

DECISIONS TO BE TAKEN IN PRIVATE

Decision	Decision maker	Date of decision	Reason for decision to be taken in private	Portfolio Holder	Contact officer from where the documents can be obtained

OTHER DECISIONS

Non-Key Decision	Decision to be taken in private? (reason)	Decision maker	Date of decision	Documents submitted to the decision maker for consideration	Portfolio Holder	Contact officer from where the documents can be obtained
Local Council Tax Support	N	Cabinet	18 September 2014		Cllr Chambers	Director of Corporate Services awebb@uttlesford.gov.uk
Saffron Walden Museum Accreditation Policy	N	Cabinet	18 September 2014		Cllr Ranger	Director of Corporate Services awebb@uttlesford.gov.uk
Assets of Community Value	N	Cabinet	18 September 2014		Cllr Barker	Assistant Director Planning and Building Control ataylor@uttlesford.gov.uk
Waitrose car park re-development	N	Cabinet	18 September 2014		Cllr Barker	Assistant Director Planning and Building Control ataylor@uttlesford.gov.uk
Conservation Area Appraisal	N	Cabinet	28 October 2014		Cllr Barker	Principal Research Officer btice@uttlesford.gov.uk

Bentfield Green						
Conservation Area Appraisal Hazel End	N	Cabinet	28 October 2014		Cllr Barker	Principal Research Officer btice@uttlesford.gov.uk
Conservation Area Appraisal Elmdon	N	Cabinet	4 December 2014		Cllr Barker	Principal Research Officer btice@uttlesford.gov.uk
Housing Allocations Policy	N	Cabinet	4 December 2014		Cllr Redfern	Roz Millership, Assistant Director Housing and Environmental Services rmillership@uttlesford.gov.uk
Conservation Area Appraisal Rickling	N	Cabinet	4 December 2014		Cllr Barker	Principal Research Officer btice@uttlesford.gov.uk
Bridge End Garden Culvert	N	Cabinet	on-going		Cllr Chambers	Director of Corporate Services awebb@uttlesford.gov.uk
Essex Energy Consortium	N	Cabinet	On going		Cllr Redfern	Director of Public Services rharborough@uttlesford.gov.uk

Work Programme 2014/15

Date	24 June 2014	2 September 2014	October 2014	25 November 2014	10 February 2015	24 March 2015
Standard agenda items	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in	Consideration of any decisions called in
	Responses of the reports of the scrutiny committee	Responses of the reports of the scrutiny committee	Responses of the reports of the scrutiny committee	Responses of the reports of the scrutiny committee	Responses of the reports of the scrutiny committee	Responses of the reports of the scrutiny committee
	Leaders forward plan	Leaders forward plan	Leaders forward plan	Leaders forward plan	Leaders forward plan	Leaders forward plan
	Scrutiny forward plan	Scrutiny forward plan	Scrutiny forward plan	Scrutiny forward plan	Scrutiny forward plan	Scrutiny forward plan
Agenda items	Annual Report from the Leader	Cranwellian	NEPT (North Essex Partnership Trust)Public and Mental Health Review Scope	Tenant Scrutiny Panel update	Budget	Health and Wellbeing Update – Peter Fentem
	Saffron Walden Museum and Castle Site Development – Scoping report	Active Uttlesford sports facility provision review – Gaynor Bradley	Air Quality – Peter Fentem	Budget Process – Preparatory report and briefing. Cabinet Member presentations		NHS England and West Essex CCG
	Day Centres – scope	Day centre review update – Cllr Evans	Saffron Walden Museum and Castle Site Development	Rural Broadband Update – Simon Jackson		
	Review of swimming pool scope to include sport facility provision	Air Quality Review Scope - verbal		Day Centres – final report		
	East of England Ambulance Service – Invite questions	NEPT (North Essex Partnership Trust)Public and Mental Health Review Scope - verbal				2014/15 Scrutiny review and forward plan
	Planning review scope – Verbal					

- NEPP – sustainability and audit review outcomes
- Rural broadband implementation update

- Manchester Airports Group (MAG) – Matt Garner/Steve Mills – request feedback, decide if an annual (November) update is required?

Committee: Scrutiny Committee

Agenda Item

Date: 2 September 2014

8

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.

Scoping Report for Scrutiny Committee Review

Review Topic	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.			
Scoping Report to go to meeting on	2 September 2014			
Review to take place at meeting on	7 October 2014			
Review Format Required at meeting <i>(tick appropriate)</i>	Written Report (to be supplied at least five working days before the meeting)	Y	Presentation	Y
Portfolio Holders	Councillor Barker and Councillor Walters			
Lead Officer	Roger Harborough			
Stakeholders	Essex County Council as Lead Local Flooding Authority Environment Agency			

Suggested Terms of Reference	<ul style="list-style-type: none"> ▪ To scrutinize the investigations carried out by the LGO and IC, the evidence considered by these external arbitrators and their conclusions, and the council's response to their findings.
Suggested Purpose and/or Objective of the Review	<ul style="list-style-type: none"> ▪ To enable the Committee to satisfy itself that the LGO carried out a thorough investigation of the material circumstances, as far as is practicable, and that, the council having accepted the investigator's remedies, no further investigation should be opened
Methodology / Approach (methods to be used to gather evidence)	<ul style="list-style-type: none"> ▪ Review of the written material supplied to the LGO and IC and their final reports
Attendees required	<ul style="list-style-type: none"> ▪ Director of Public Services ▪ Assistant Chief Executive Legal

Complaint reference:
12 015 133

Complaint against:
Uttlesford District Council

The Ombudsman's final decision

Summary: Faults in the Council's handling of a planning application are remedied by the recommendations for noting this decision.

The complaint

1. In summary the complaint is that when granting planning permission and considering its enforcement powers the Council failed to:
 - properly consider use of its enforcement powers against a neighbouring development;
 - properly consider the impact on neighbours when granting further planning permission particularly in respect of drainage;
 - properly respond to complaints.
2. The complainants, whom I shall refer to as Dr B and her neighbours, say this has left them exposed to leakage from the landfill and flooding from the lack of drainage. They say the Council failed to control development at what I shall call Ashwell by its owner I refer to as Mr F.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

How I considered this complaint

4. In considering the complaint I have:
 - spoken with Dr B
 - studied the papers, photographs and reports presented with the complaint;
 - put enquiries to the Council and examined its response;
 - shared with Dr B and the Council my provisional view and considered the comments received on it.

What I found

Use of waste landfill & impact on Water Courses

5. The Environment Agency (the Agency) is responsible for controlling dumping waste that may affect a watercourse such as a drainage channel or removal or

blocking of such channels. It has powers to prosecute offenders and will decide whether to prosecute in accordance with prosecution authorities criteria.

6. Essex County Council (the County Council) is a water authority with some responsibility for certain water courses and lead flood risk authority. It should be notified of any action likely to affect those water courses or likely to affect flood risk.

Planning controls and enforcement

7. The Council as planning authority must consider all planning applications received. It will decide whether to grant planning permission having considered how it affects the amenity of the area. It may liaise with the Agency and take the Agency's expert advice as part of its consideration. It may also liaise with the County Council as lead flood risk authority on flood related issues.
8. The Council has a duty to consider if it should use its enforcement powers to remedy any breach of planning controls or a planning permission. Government guidance under the National Planning Policy Forum (NPPF) says councils should only use enforcement action where it is expedient and in the public interest to do so. The test is whether the breach causes a significant harm.

What happened

Events leading up to the complaint

9. In 2000 the Council gave planning permission to knock down and rebuild Ashwell a property neighbouring Dr B's property. The owner did not implement the permission. Mr F bought Ashwell in 2005. In 2007 Ashwell burnt to the ground. The next day Mr F brought a caravan onto the site and built a wooden porch onto it. Mr F did not have planning permission. The Council decided not to take enforcement action provided Mr F fulfilled the planning permission granted to the previous owner in 2000. Mr F took eighteen months to rebuild Ashwell. Dr B says the Agency estimates during the build Mr F imported 100 lorry loads of waste which he spread over the land. This increased the height of the land by 1 metre. Mr F removed a drainage ditch to the detriment of Dr B and her neighbours because it prevented flooding of her home, her neighbours and a nearby country park.
10. Photographs show this earlier drainage ditch. The owner filled it in and did not provide a replacement. Dr B and her neighbours believe Ashwell now has inadequate drainage.
11. Dr B and her neighbours complained to the Council because Ashwell as rebuilt did not conform to the planning permission granted in 2000.

Environmental Issues – Land Drainage

12. Between 2007 and 2010 the Council liaised with the Agency on its progress with prosecuting Mr F for obstructing a watercourse contrary to Section 23 of the Land Drainage Act 1991. In 2009 the Agency told the Council it could not prosecute the notice served in 2008 because it had lapsed. Dr B and her neighbours say this shows the loss of the drainage ditch and the resultant inadequate drainage of the site continues to date.
13. In February 2011 the Council's environmental health officers considered the Agency's reports on the waste found at Ashwell. The Council says "...the analysis indicates that the waste material is not completely inert...From a contaminated

land perspective, it does not look as if it meets the current test of a Significant Possibility of Significant Harm...”

14. Officers visited the site in March 2011 and held a case conference in April 2011. The conference decided that “... as there had been no general raising of the level of the land and the fill did not pose a significant possibility of significant harm, the file would be closed...”
15. Dr B and her neighbours dispute the Council’s decision on raising the land. Other tests they say show hot spots suggesting harmful material may be present.

Planning Permission for traveller site

16. In July 2012 Mr F applied for permission to create a traveller site at Ashwell. The Council publicised the application by erecting a site notice and delivering neighbour notification letters to Dr B and her neighbours. Dr B says it did not notify the local parish council or the local airport 6km from the site although it normally does so.
17. The Council received objections to the application from the local parish council, 89 residents and a 73 name petition. Natural England did not object subject to the applicant complying with the development as shown on the application.
18. The case officer’s report has five pages showing the objections received, as well as six pages recording the parish council’s objections and a page on the petition. The case officer considers the objections, the impact on amenity and the local plan policies. The case officer’s report notes the development is contrary to local plan policies. The report says the development will not so significantly impact on the amenity of the area to warrant a refusal.
19. The report specifically addresses the issues of travellers. It says the use is contrary to policy on limiting development in the countryside but screening proposed in the application will lessen the impact on residential properties and the street scene.
20. In the report the case officer notes the proximity of the airport and the NPPF policy to protect new residents from unacceptable risk of noise pollution.
21. The case officer recommends approval for a temporary permission in the face of the large number of objections on grounds of:
 - The district does not have enough gypsy/traveller sites;
 - The development will impact on the countryside protection zone but the need for gypsy/traveller sites outweighs this breach of policy;
 - Granting a temporary permission expecting the applicant to find a site outside the countryside protection zone away from the noise of the airport.
22. The Council granted a temporary planning permission for four years from August 2012 with conditions attached. The permission will expire in August 2016. Under the conditions the developer needs to provide to the Council for approval:
 - Details of the foul drainage works’ exact position and course, type and discharge of final effluent into an identified watercourse;
 - Surface water disposal arrangements.
23. The conditions also imposed an obligation on the developer to carry out and submit to the Council:
 - An investigation and risk assessment assessing the nature and extent of any contamination of the site. An appraisal of the remedial options and

proposals for preferred options following DEFRA and the Agency's guidance.

24. Dr B and her neighbours complain the Council presented to committee information that contradicted itself and the planning portal failed to display all the documents seen by councillors. Residents say the Council ignored them. It failed to consider the impact on them of the waste dumped on the land and the flooding caused by the removal of the drainage ditch.

Enforcement of planning controls

25. In November 2012 Dr B and her neighbours met with the Council to discuss concerns about breaches of planning controls. The Council opened enforcement investigations into allegations of:
- a. Failure to erect the stables as shown in the 2000 planning permission;
 - b. Breach of conditions on external lighting (wrongly placed and lit all night);
 - c. Breach of conditions controlling burning waste on site;
 - d. Pollution of a ditch alongside the highway;
 - e. Contamination of the land;
 - f. Breach of conditions preventing commercial use;
 - g. Failure to comply with landscaping conditions;
 - h. Erection without permission of sheds, a gazebo and a piggery.
26. In each case (except for item d above) the Council investigated the allegations and found breaches of planning control. It had to decide in line with government guidance under the NPPF whether the harm caused merited enforcement action. The question is whether it is expedient and in the public interest to do so.
27. In breaches a, b, f and g above the Council decided it was not expedient to take enforcement action. For breach c there is not enough evidence of a breach. Breach d is not a planning matter because pollution of a waterway is within the remit of the Agency. Dr Johnson says the Council failed to pass on the concerns to the Agency. Breach e above about contaminating the land remains an open investigation. Although open the Council did not report this fact to the Planning Committee when it considered, and deferred, an application to discharge conditions on the planning permission.

Discharge of conditions

28. In October 2012 and March 2013 Mr F applied to the Council for the discharge of two planning conditions. The conditions concern the remediation scheme and foul water drainage.
29. The Council consulted the Agency. It advised "it is important that the ditch that is to receive the flows from the site has sufficient capacity to accept these and that discharge is able to flow without increasing the risk of flooding on or off site..." The Agency recommended the Council contact the County Council as the lead local flood authority for further comment.
30. Officers recommended discharge of the soil remediation scheme condition. They recommended refusal of the application to discharge the foul water condition. The Committee deferred both applications and the conditions remain in force. Officers continue to negotiate with Mr F on schemes that will enable them to discharge the conditions.
31. The Council launched further investigations into the drainage arrangements for Ashwell and neighbouring properties and the nature of the infill. Officers met with

Dr Johnson and her neighbours. They say this shows the Council failed to properly consider these issues before it granted planning permission. They say it is only in the discharge of the conditions the Council contacted the County Council for its advice. Die testing and investigations using CCTV cameras have not proved the true drainage patterns for Ashwell and neighbouring properties. Further tests are necessary. However they have suggested the ditch in Ashwell does not drain into Dr B or her neighbour's drainage system.

32. In an email dated 3 December 2013 to Mr F's agent the Council casts doubt on the assumption the original ditch for Ashwell is a culverted flowing ditch forming an acceptable drainage system. In other words that it is part of a connected drainage system rather than a soak away. The email says "The matter in question is whether a single pipe goes the whole length of a culverted ditch...a CCTV survey...does not indicate a pipe through to [a ditch within Ashwell]...There is doubt as to whether the ditch from in front of [Ashwell] is a flowing ditch and whether it is indeed not blind. Further details provided by the builder who built [Dr B's property] indicate this is not a culverted ditch...I appreciate that this now appears to be a sea change in my reading of the situation...I cannot recommend approval of the discharge of the condition..."
33. Before the Council can decide the applications for discharge of the conditions it needs to know if Ashwell has or needs a drainage system of its own to prevent flooding on Dr B's and her neighbour's land. Concerns about the impact on Dr B's and her neighbour's land caused by the infilling of a ditch within Ashwell is the central question for the neighbours. Their concern is raising the land by around one metre and removing a drainage ditch increases the flood risk for their homes. Dr B and her neighbours expected this central question to be answered before the Council granted planning permission. The Council says If the development does not proceed periods of heavy rainfall may result in a greater risk of flooding anyway. it says "...there is no evidence that the filled in ditch was key to securing effective run off...it was probably another blind arm." Residents argue its removal does nothing to improve drainage but can only limit it further.

Analysis

34. I have read and considered the comprehensive documentation gathered in this investigation. For legal reasons however I cannot take a view on events which happened before 2007. Some of the events post 2007 would be out of jurisdiction if they had been known at the time. However, because some information only came to light in 2012 following FOIA applications these are within my jurisdiction.
35. My role is to decide if the Council considered its enforcement powers without fault. My role is also to decide if the Council granted planning permission without fault. My role is not to decide the merits of the application or those decisions if properly made.

Enforcement

36. The Council is under a duty to consider using its enforcement powers in line with government advice. The Council did not judge it expedient to take enforcement action in most of the breaches identified at Ashwell. I cannot challenge the officer's judgement on whether to exercise this discretionary power. It acted without fault and so I cannot challenge its decision not to take enforcement action. The investigation into unauthorised tipping remains open.

Planning procedure

37. Planning applications must be given due publicity, the responses to that publicity considered, and the material planning considerations considered. If the Council does that it acts without fault.
38. The Council gave publicity to the planning application. The Council says it notified the parish council, the complainants say it did not. It should notify the parish council. The parish council presented objections to the Council so however it heard of the application it knew of it. The parish council's objections appear at length in the report to councillors and so they had the parish council's view before them. Any fault in notification did not therefore affect the final decision.
39. The Council did not notify the airport. The Council says it does not have to and noise issues are not dealt with through notifying the airport. The Council considered the likely impact of the airport on the site and imposed a time limit for the permission so the developer could find a site away from the noise of the airport. Therefore any fault did not affect the final decision.
40. The officers and Councillors recognised the importance of drainage and concerns about the waste spread on the ground. The conditions imposed under which the developer must carry out an investigation of soil conditions, and the exact positions and courses of the drainage system reflect the concerns of residents. The question is, in the light of what officers knew about the filling in of the drainage ditch, whether it is enough to put planning conditions on the permission to fulfil the duty to have all relevant information before councillors when they decided the application.

Waste on the site

41. The Agency is responsible for the leakage of any contaminants in the waste on the land entering the water flows. Public health issues lie with the Council's environmental health officers. The officers say on current information the waste does not pose a substantial risk. Residents take a very different view and point to expert opinion in support of that view. I cannot challenge the officers' professional view. The condition demanding investigations allow the Council to take a different view on completion of those investigations. It can then decide if the proposals for remediation are acceptable. Therefore there is a mechanism for dealing with any waste issues.

Drainage

42. The material planning considerations relevant to drainage are:
 - The capacity of the physical infrastructure to cope with the discharge of water;
 - The likelihood of an increase in flood risk;
 - Local drainage issues such as the foul and surface water drainage arrangements.
43. Councils may decide the proposed use of the land is acceptable subject to the applicant meeting conditions imposed in the planning permission to cover the above issues. Where these issues are a prime concern as with this site, it is good practice to consider if approval can be given before more is known about the drainage arrangements.
44. Conditions imposed by the Council say the developer must produce plans for approval of the drainage he proposes for the site. They also say he must produce a plan showing the exact position, extent and nature of the drainage on the site.

That shows the Council lacked information on how the site drains now and therefore how the development may affect drainage in future.

45. Concern over drainage on this site is not new. The Council liaised with the Agency over a prosecution for removing a drainage ditch. The Council knew therefore the developer had compromised the drainage system before the application.
46. In deciding the planning application the Council considered the impact on neighbours and imposed conditions to protect their amenity. Such an approach is usually enough. However the history of the site and the incidences of flooding on the neighbour's property suggest drainage and flooding are central to any decision on the development of the site.
47. Drainage and flood risk have been important issues for both the Council and the Agency for some time. So best practice suggests the Council could have asked for the information set out in the conditions before granting permission. There is a real prospect with all the information coming to light now officers and councillors may have reached a different view and therefore a different decision. Until the developer produces the plans required under the conditions and the Council approves or rejects them we cannot know for certain. Failing that it may not be known until a new planning application is received, considered and decided.
48. In December 2013 the Council said there had been a "sea change" in the officer's view because of information coming to light during negotiations for the discharge of the conditions. It is my view given the importance of these issues to the principle of development better information at the time of the decision may have prevented the current uncertainty. The temporary permission dates from 2012. The developer is already into the second year of his four year temporary permission and may ask for an extension. If granted that will create further years of uncertainty for the residents. This has placed them in an unacceptable position. The Council says this is not true. It says "The neighbours face no more uncertainty than if the application had been refused solely on surface water drainage grounds. Reasons for refusal are there to advise the application of specific problems with the planning application, enabling the applicant where possible to revise the proposal to overcome the reason for refusal...it would now be open to the applicant to submit a fresh planning application...if the applicant does nothing and the conditions are not agreed as having been met, the permission expires in 2016..." If the Council had asked for more information before deciding the application while running the risk of an appeal for non determination, any refusal or decision could demonstrate full knowledge of the site and give greater confidence to the residents.
49. Dr B and her neighbours have lost faith in the Council's ability to manage development of this site and to protect their amenity.

Recommended action

50. To remedy the injustice caused by the faults identified I recommend and the Council agrees to:
 - a) Apologise
 - b) Place a note on the planning files to record this decision.
 - c) Place a note on the planning files recording my concerns about drainage and the need to consider if more than usual information is required in this instance which should inform any further decisions.

-
- d) Advise planning officers of this decision and my view the Council should have liaised with other agencies given the flood risk and obtained more information before deciding the application.
 - e) Pays to Dr B the sum of £250 and £100 to each of her neighbours 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.

Final decision

- 51. The Council handled the application with fault. The remedy recommended remedies the injustice arising and until the Council discharges the conditions I cannot consider any further injustice.

Investigator's decision on behalf of the Ombudsman

John Mitchell
Chief Executive
Uttlesford District Council
Council Offices
London Road
Saffron Walden
Essex CB11 4ER



15 July 2013

Your ref: MJP/sk

Case Reference Number FER0480214

Dear Mr Mitchell

Environmental Information Regulations 2004 (EIR)

Complaint by *Redacted*

Please find enclosed a decision notice relating to a complaint from *Redacted*
Redacted

The complaint has been considered by the Commissioner and the decision notice sets out the reasons for the decision. If you disagree with the decision notice you have the right to appeal to the First-tier Tribunal (Information Rights).

The Commissioner will publish this decision on the ICO website, but will remove all names and addresses of complainants. If you choose to also reproduce this decision notice, then the Commissioner expects similar steps to be taken.

Yours sincerely

Redacted

Elizabeth Hogan (Mrs)
Senior Case Officer
Complaint Resolution – Group 1

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 15 July 2013

Public Authority: Uttlesford District Council
Address: Council Offices
London Road
Saffron Walden
Essex
CB11 4ER

Complainant:
Address:

Redacted

Decision (including any steps ordered)

1. The complainant has requested information relating to a planning decision in their local area. Uttlesford District Council (the "Council") provided some information within the scope of the request but denied holding other information. It upheld this at internal review although there was a considerable delay before it conducted that review.
2. The Commissioner's decision is that the Council does not hold other information within the scope of the request but that it has contravened Regulation 11 of the EIR by failing to conduct an internal review within the time required.
3. No steps are required.

Request and response

4. On 25 October 2013, the complainant wrote to the Council and requested information in the following terms:

- 1 The case file for UTT/1360/12/FUL
- 2 All notes, minutes, correspondence and other communications, external and internal, relating to Cranwellian, CM22 6NB
- 3 Any written permissions given by Uttlesford concerning waving of conditions or erection of buildings and fences relating to UTT/0008/05/REN
- 4 Details and communications external and internal relating to Enforcement concerning Cranwellian
- 5 Details including agendas, attendees, duration and informal notes taken at any meetings concerning Cranwellian whether minuted or not
- 6 Relevant extracts from databases holding detail concerning Cranwellian

I would expect to find communications not only within Uttlesford Planning, but also enforcement and environmental health. I am aware of Enf/218/07/b and others including the drainage file dealt with by [named individual] in 2007.

If specific documentation is available on your website, please indicate where so that I can obtain these myself. Scanned copies burned to CD are acceptable if this is a cheaper and more convenient method."

5. The Council responded on 15 November 2012. It provided some information and refused to provide any personal information relating to members of the public. It directed the complainant to its website for other information and explained that old planning applications were available to view on microfiche at its offices. It explained that the property in question was not on its Contaminated Land Register because "the contamination is too recent to feature on our list of risk assessments to be carried out on land which has the potential to be contaminated by historic useage". It explained how risks would be managed for land that was more recently contaminated.
6. The complainant requested a response to items 5 and 6 on 19 November 2012 and on 4 December 2012; the complainant wrote to the Council to advise that the following items had not been provided:
- Any written permissions given by Uttlesford concerning waving of conditions or erection of buildings and fences relating to UTT/0008/05/REN

- Details including agendas, attendees, duration and informal notes taken at any meetings concerning Cranwellian whether minuted or not
 - Relevant extracts from databases holding detail concerning Cranwellian
 - The drainage file dealt with by [named individual] in 2007".
7. The complainant asked the Council to confirm or deny whether it held information in relation to the first three items. She also identified a gap in records on the Cranwellian file provided to her to cover the period between the periods 29 June 2011 and 18 May 2012 and asked for confirmation or denial as to whether any records were held from this period.
8. The Council acknowledged this as a request for internal review and gave a deadline date for response of 6 February 2013. It eventually provided the outcome of its internal review on 5 March 2013 following the Commissioner's intervention.

Scope of the case

9. The complainant initially contacted the Commissioner on 10 January 2013 to complain about the way his request for information had been handled. Following an exchange of correspondence, it was established that she continued to seek access to the following information:
- Details including agendas, attendees, duration and informal notes taken at any meetings concerning Cranwellian whether minuted or not. (She did not agree that she had been provided with all the information the Council holds within the scope of this request.)
 - Relevant extracts from databases holding detail concerning Cranwellian. (She did not agree that she had been provided with all the information the Council holds within the scope of this request.)
 - The drainage file dealt with by [named individual] in 2007. (She did not agree that she had been provided with all the information the Council holds within the scope of this request.)
 - Records on the Cranwellian file between the periods 29 June 2011 and 18 May 2012. (She disputed the Council's assertion that it does not hold this information.)

Reasons for decision

Regulation 2 – Environmental information

10. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR. The Commissioner considers that the information requested falls within regulation 2(1)(c): information on:

“measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements”

11. Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information requested by the complainant to be environmental information, because the information relates to a planning application.

Regulation 5 – Is requested information held?

12. Regulation 5(1) of the EIR provides that “a public authority that holds environmental information shall make it available on request”. A public authority may only refuse to disclose information where an exception applies.
13. The matter at issue here is whether the Council holds the 4 items listed in the “Scope of the Case” section above.
14. In its letter of 5 March 2013 to the complainant (where it eventually set out the outcome of its internal review) it said:

“1. There are no conditions which have been waived in relation to UTT/0008/05/REN.

2. There are regular meetings between planning officers and enforcement officers to discuss enforcement issues. These meetings do not have a formal agenda, merely a list of properties to be discussed. The meetings are not formally minuted but there are brief notes which are kept. I enclose copies of the notes of meetings for the 14 September 2010, 28 September 2010, 8 February 2011, 8 March 2011 and 12 April 2011 when Cranwellian was discussed. The remainder of the notes have been redacted as they relate to other matters not

relating to Cranwellian and the information relating to those properties is data protected.

3. The only database with details concerning Cranwellian is the planning file. I understand a full copy of this was supplied to you.
4. [Named individual's] work regarding drainage was passed to Essex County Council. It would appear there is no formal file relating to this particular property."
15. It also confirmed that the documents supplied to her concerning pre-application advice is complete and that there is no other documentation. It also explained the time gap as having arisen because of the gap between the date a particular form was submitted and the date a particular fee was paid.
16. The Commissioner asked the Council a series of questions to establish whether it held further information beyond what had been disclosed. These sought detail about the scope, quality and thoroughness of its searches.
17. The Council explained to the Commissioner that it examined all electronic and paper files that it held in order to prepare a response. It also searched the e-mail accounts of employees who may have been "engaged in these matters". Anything that it held would have been found. It also explained that none of the relevant staff use personal or laptop computers. All information is networked and accessible on the council's databases.
18. It said that when conducting electronic searches it used the relevant planning and enforcement reference numbers and the word "Cranwellian".
19. It said that no documents had been destroyed or deleted because this would not accord with its document retention policy for documents of this age. It also said that no officers involved have any recollection of meetings with the complainant. It said that Environmental Health Officers recall telephone conversations with her regarding contaminated land and an alleged blocked ditch but that these were not recorded. It added that it had no business purpose for doing so. It explained that the former conversation was in connection with giving advice and the latter was in the nature of a service request to ask for an inspection of the ditch. Other than to note that a visit was required, it reiterated that it had no business purpose in recording the content of that call.
20. Finally, it explained that the information that it was required to keep was disclosed in response to the request.

21. When considering an information access dispute as to whether further information is held, the Commissioner considers the matter to the civil standard of proof, that is, on the balance of probabilities. The Commissioner has considered the Council's response and has concluded that, in the absence of any evidence to the contrary and, on the balance of probabilities, it has provided the complainant with all the information it holds within the scope of her request. Its searches were of sufficient scope, quality and thoroughness. The Commissioner also thinks that the Council's explanation about the time gap in the records is wholly plausible.
22. While the Commissioner is satisfied that all the information described in the request has been disclosed, he is concerned about the Council's overall handling of the request. In particular, he notes the delay that arose in responding to the complainant's request for an internal review.

Regulation 11

23. Regulation 11(3) provides that upon receiving representations from an applicant unhappy with a response to a request for information, the public authority should review its response. Regulation 11(4) provides that the outcome of this internal review should be communicated to the applicant within 40 working days.
24. In this case, the complainant clearly requested an internal review 19 November 2012 and 4 December 2012. The Council acknowledged this on 7 December 2012. However, it did not set out its final position for the complainant until 5 March 2013.
25. The Commissioner recognises that correspondence between the parties has been quite detailed and protracted. However, the Council acknowledged that there had been a delay in completing its internal review.
26. In failing to conduct an internal review within 40 working days of the review being requested, the Council breached regulation 11(4).

Right of appeal

27. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Redacted

Signed

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF