



Northern Ireland

Public Services

Ombudsman

Investigation of a complaint against Mid and East Antrim Borough Council

Report Reference: 202002226

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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Case Reference: 202002226

Listed Authority: Mid and East Antrim Borough Council

SUMMARY

I received a complaint about the actions of Mid and East Antrim Borough Council (the Council). The complaint related to how the Council considered a planning application it received on 14 July 2021.

In considering the complaint, I established maladministration in relation to the:-

- Obtaining floor plans for the existing garage;
- Recording of rationale regarding the decision not to obtain floor plans;
- Recording the decision making process in respect of consideration of the Addendum to PPS 7;
- Recording the decision making process in respect of consideration of objections received; and
- Provision of information to the Planning Committee in relation to the size of the existing garage.

While I identified maladministration, I did not identify any grounds on which I could question the merits of the decision. I am satisfied the Council would not have reached a different decision had these failures not occurred.

I did not establish maladministration in relation to the:-

- Openness and transparency of the processing of the application.

I recommended that the Council apologise to the complainant for the failures identified. I also recommended actions to ensure service improvement and to prevent future recurrence. The Council accepted my recommendations.

THE COMPLAINT

1. I received a complaint about the actions of Mid and East Antrim Borough Council (the Council). The complainants raised concerns about the Council's consideration of a planning application, it first received on 14 July 2021.

Background

2. On 14 July 2021 the Council's Planning Service¹ received an application for a replacement domestic garage. The complainants, who resided in close vicinity to the proposed application, objected to the application. The Planning Service received additional objections to the application from other parties. On 2 September 2021 the Planning Service, advised the applicant, it would likely refuse planning permission based on the information submitted. This was because the proposed garage was not characteristic of a domestic garage and did not comply with the relevant planning policy. The Planning Service provided the applicant with the opportunity to resubmit information to address concerns raised and it received a final set of amended plans on 12 November 2021. The Planning Service re-notified relevant neighbouring properties that it had received amended plans and the complainants and other neighbours submitted further objections.
3. The Planning Service considered the amended plans and recommended approval of the application in its report to the Council's Planning Committee² on 10 February 2022. The Planning Committee approved the application, and the applicant received his formal planning approval on 16 February 2022. A chronology of events leading to the complaint is enclosed at Appendix two to this report.

Issue of complaint

4. I accepted the following issue of complaint for investigation:

¹ Service within the Council that processes planning applications, prepares Development Plans, prepares policies and enforces planning control.

² One function of planning committee is to determine planning applications or to decide upon or vary appropriate conditions, limitations, terms or other restrictions upon any approval, consent or permission granted and/or agree reasons for refusing consent.

Whether the Council considered the planning application it received on 14 July 2021 in accordance with relevant legislation, policies, and procedures.

INVESTIGATION METHODOLOGY

5. In order to investigate this complaint, the Investigating Officer obtained from the Council all relevant documentation together with its comments on the issues the complainants raised. This documentation included information relating to the Council's complaints process.

Relevant Standards and Guidance

6. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those specific to the circumstances of the case. I also refer to relevant regulatory, professional, and statutory guidance.

The general standards are the Ombudsman's Principles³:

- The Principles of Good Administration

7. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- The Planning Act (Northern Ireland) 2011 (2011 Act);
- The Planning (General Development Procedure) Order (Northern Ireland) 2015 (GDP Order);
- The Department of the Environment's, Addendum to Planning Policy Statement 7, Residential Extension and Alterations, March 2008 (Addendum to PPS 7); and
- Mid and East Antrim Borough Council's, Protocol for Operation of

³ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

Planning Committee, May 2021 (Council's Committee Protocol).

8. Given that the complaint concerns decisions the Planning Service made in relation to the application, it is important I emphasise that the 2016 Act, which governs my role, empowers me to investigate the administrative actions of the public authorities in Northern Ireland. The 2016 Act does not authorise or require me to question the merits of a discretionary decision taken by a public authority, unless an investigation discloses evidence that there was maladministration in the process by which the public body reached that decision.
9. I did not include all information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.
10. A draft copy of this report was shared with the complainants and the Council for comment on factual accuracy and the reasonableness of the findings and recommendations.

THE INVESTIGATION

Whether the Council considered the planning application it received on 14 July 2021 in accordance with relevant legislation, policies, and procedures.

Detail of Complaint

11. The complainants raised the following concerns:-
 - The Planning Service did not adhere to planning policies when considering the planning application and raised concerns over the process used to consider the planning application; and
 - The Planning Service presented to the Planning Committee on 10 February 2022 incorrect information regarding the dimensions of the existing garage. This was despite indications by Objector 1, who attended the meeting, that the dimensions were incorrect.

Evidence Considered

Legislation/Policies/Guidance

12. I considered the following legislation/policies/guidance:

- The 2011 Act;
- The GDP Order;
- Addendum to PPS 7; and
- The Council's Committee protocol.

Council's response to investigation enquiries

Application of Planning policy and process used to consider application

13. The Council said: it exercises '*...professional judgement...*' when interpreting planning policy. Planning policy and a wide range of factors can influence this judgement. These include '*...site-specific consideration, such as, location, screening, topography, critical views and the characteristics of building being replaced. In this case, the Council when exercising its planning judgment reached a balanced decision having considered all relevant material considerations and concluded that the amended garage was acceptable.*'
14. The Council said: it considered the original application unacceptable in principle as the scale and massing of the proposal '*...was excessive...*'; would '*...appear unduly conspicuous...*' detracting from the character of the area and, '*...appear visually obtrusive...*' which would '*...negatively affect the residential amenity of neighbouring properties...*' The proposal's relationship to the adjoining dwelling was '*...considered inappropriate...*' The amended plans, received on 12 November 2021, were considered '*...acceptable as the height and footprint of the proposed building was reduced, a timber fence and wall was added to help screen the building and the ground level dropped by 1.60 metres. Cumulatively these amendments adequately addressed the concerns regarding the excessive size of the replacement building and its unacceptable visual impact.*'
15. The Council said: it made the decision on this application in '*...an open and transparent manner...*' at the Council's Planning Committee. It advertised the

application, notified neighbours, ‘...carefully considered...’ objection letters and, afforded speaking rights to objectors at the Planning Committee. There had been no prejudice in the processing of this application...’

Presentation of information on dimensions of existing garage to Planning Committee

16. The Council said: ‘*The Case Officer’s report and the Planning Officer both referred to the building measuring approximately 12m x 6m...’* and these were ‘...*approximate measurements taken from the submitted location map... the site was formally inspected on the 19 October 2021...The plans date stamped 14 July 2021 show details of the existing shed. The site inspection...confirmed what was on the ground.*’ The Case Officer’s report is ‘...*a general consideration of the issues raised presented in a proportionate manner...*’ Drawings and other technical information ‘...*are published on the Planning Portal and therefore available for inspection by Elected Members and members of the public...*’

17. In relation to the existing garage the Council said: it did not confirm the size of the garage as ‘...*the impact of the original garage was not under consideration...*’ It did not consider requesting floor plans as, ‘...*they were not required to make an informed decision, and to request such plans would be disproportional...The planning assessment related to the impact of the proposed garage...*’

Relevant Council records

18. I considered the records the Council and the complainants provided. I enclose relevant extracts from the records at Appendix four to this report.

Analysis and Findings

Application of Planning policy and process used to consider application

19. The complainants said the Planning Service did not adhere to planning policies when considering the planning application and was concerned over the process used to consider the planning application.

i. Request for floor plans

20. I refer to Annex B of Addendum to PPS 7 which states '*...For applications for full planning permission both existing and proposed elevations and floor plans are required...*' I refer to the Case Officer's record of her site visit on 19 October 2021 in which she confirms the plans of the existing development appear correct. I note that there is no information recorded as to how she reached this conclusion.
21. I acknowledge the Council's comments that in this case it would have been disproportionate to request floor plans as '*...the impact of the original garage was not under consideration...*' and that it took the measurements of the existing garage from the submitted location map. However, I consider it would have been prudent for the Planning Service to request floor plans. Or, if it did not consider it proportionate, for the Case Officer to measure and accurately record the size of the existing garage during her site visit. This is because of the number of objections the Council received about the size of the new garage in relation to the existing garage. Additionally, while I acknowledge the impact of the existing garage was not under consideration, I consider that floor plans could have assisted the Case Officer in her determinations regarding the scale and massing of the proposal and whether these were '*...sympathetic with the built form...of the existing property...*' as set out in the criteria Policy EXT 1 and Section A11 of Annex A of Addendum to PPS 7. I further consider that if the Planning Service did not go back to the applicant to request floor plans of the existing garage, in line with Annex B of Addendum to PPS 7, it should have recorded the rationale for this.
22. I refer to the first Principle of Good Administration 'Getting it Right' which requires public bodies to act in accordance with the law and relevant guidance. I also refer to the third Principle of Good Administration: which requires public bodies to be '*open and accountable*' in providing honest, evidence-based explanations and giving reasons for its decisions and keeping full and accurate records. I consider that failure to obtain accurate floors plans of the existing garage or the lack of the recording of a rationale for its decision to do so, constitutes maladministration. I will consider the injustice sustained by the complainants at paragraph 31.

ii. Consideration of policy criteria

23. I note Policy Ext 1 and section A11 of Annex A of the Addendum to PPS 7. I considered the amended plans the applicant's agent submitted including the information and photographs on the proposed external finish. I further considered that at a Group⁴ meeting on 4 January 2022, officers discussed the application. This involved discussions on the size of the proposed garage. I refer to section seven of the Case Officer's report to the Planning Committee that summarises consideration given to relevant policy.
24. I note the Council's comments that it considered the amended plans submitted on 12 November 2021 acceptable as set out at paragraph 14. I also acknowledge the Council's comments that the Case Officer's report is '*...a general consideration of the issues raised presented in a proportionate manner...*' and that the report refers to the relevant policy at section seven. I acknowledge and accept the Council's comments that it is appropriate to present a summary of the consideration of relevant policy to the Planning Committee. However, it is my opinion the Council should retain a full record of the Case Officer's deliberations within the planning file. This should include the recording of a rationale as to why the Planning Service considered criteria within planning policy fulfilled.
25. I refer again to the third Principle of Good Administration which requires public bodies to state '*...its criteria for decision making and giving reasons for decisions...*' and to '*...keep proper and appropriate records...*' This principle underscores the need for public bodies to create and retain records of decisions. This is a key principle of good administration. To comply with this principle, adequate and contemporaneous records of matters the public body considered, decisions made, and the reasons for those decisions, including the weight given to relevant factors, must be retained. Without such records it is impossible for public bodies to defend its actions and the decisions it makes

⁴ The purpose of the group planning meetings is for case officers to discuss their caseload of planning applications with colleagues and agree recommendations.

when challenged. It can also have the effect of diminishing the public's confidence that decisions made are not arbitrary and outside of due process.

26. I consider the lack of record keeping regarding the decisions making process in respect of consideration of the Addendum to PPS 7 (specially Policy Ext 1 and Annex A, section A11), as maladministration. I will address the injustice the complainants sustained at paragraph 31.

iii. Process used

27. I note the complainants' concerns regarding the process used to consider this application. The records evidence that the Planning Service notified relevant neighbours of the application, and due to the numbers of objections received, referred the application to a Public Planning Committee.

28. I refer to the 2011 Act which requires Councils to '*...take into account any representations....*' relating to applications. I considered the issues the complainants raised in their letter of objections dated 4 August and 7 December 2021. I also refer to the Case Officer's report and particularly sections six and eight. I acknowledge the Council's comments that '*...a general consideration of the issues raised presented in a proportionate manner...*' I accept the Case Officer's report is a summary of the consideration given to objections.

29. I am satisfied, that in this case, the report summarises the complainants' concerns and those of other objectors, as well as summarising the Case Officer's consideration of the objections. I am also satisfied the Case Officer addressed some of the concerns the objectors raised by means of conditions placed on the recommendation to approve the application. However, I consider the planning file should contain a full record of the Case Officer's consideration of the objections received including their rationale for considering the validity of the objections. I refer to paragraph 25 about the third Principle of Good Administration. I consider the lack of record keeping regarding the decisions making process in respect of consideration of objections received as maladministration. I will address the injustice the complainants sustained at paragraph 31.

30. While I raised concern with the retention of the Council's written rationale for its decisions, I have not identified any concerns that it undertook the process leading to its decisions in a way that was not open, transparent, and fair. However, I acknowledge that the complainants' concerns regarding the process used, particularly in relation to the information that was provided to the Planning Committee, remain. I will address the information provided to the Planning Committee at paragraphs 33 to 38.
31. As a result of the maladministration identified at paragraphs 22, 26 and 29. I consider the complainants sustained the injustice of uncertainty and frustration. This is because I am unable to provide reassurance to the complainants regarding the Council's decision making process. Furthermore, I consider that it also caused the complainants time and trouble by bringing their complaint to this office. Therefore, I partly uphold this element of complaint.
32. While I have identified maladministration in relation to record keeping for the decision making process, I recognise it is for the Case Officer, in conjunction with other colleagues, to make a professional discretionary judgment on the application and make a recommendation to the Planning Committee. I have not identified any grounds on which I could question the merits of the decision. I am satisfied the Council would not have reached a different decision had these failures not occurred. Therefore, on balance, I consider the decision on the application would have been the same.

Presentation of information on dimensions of existing garage to Planning Committee

33. The complainants said the Planning Service presented incorrect information, regarding the dimensions of the existing garage, to the Planning Committee. This was despite indications by Objector 1, who attended the meeting, that the dimensions were incorrect.
34. I considered the records both the Council and complainants provided as set out at Appendix four. I note the Council's audio recording of the Planning Committee, as well as the Case Officer's report and the Principal Planning

Officer's PowerPoint slides as presented to the Committee. I also note the range of measurements of the existing garage obtained from the submitted location map. I note the existing garage is referenced as '*...measuring approximately 12m x 6m...*'. I acknowledge the complainants dispute this information and agreed with the measurements presented by Objector 1 to the Committee.

35. I note the Council's comments that the drawings and other technical information '*...are published on the Planning Portal and therefore available for inspection by Elected Members and members of the public...*' I also note the Council's comments that the measurements of the existing garage '*...were taken from the submitted location map...*'

36. I acknowledge the complainants disputed measurements the Council provided to the Planning Committee for the existing garage. Having considered the location map provided, my office discovered it is possible to obtain a range of measurements depending on where Objector 1 or Officers took measurements on the dashed line on the map. I consider that within the presentation and report provided to the Planning Committee, Officers gave approximate (rather than exact) measurements of the existing garage. I acknowledge the Council's view that all drawings were available on the planning portal for Committee members to scrutinise. However, as I identified in paragraphs 20 to 22 of this report, given the number of objections about the size of the proposed garage when compared with the existing garage, I consider it was more appropriate for the Council to provide exact measurements of the existing garage to the Planning Committee. This is especially given the discrepancy of measurements obtained using the location map. The Council could only have achieved this by obtaining floor plans of the existing garage or by the Case Officer measuring and accurately recording measurements during her site visit. Without the exact measurements, I cannot be satisfied that the information the Council provided to the Planning Committee was accurate.

37. I refer to the third Principle of Good Administration '*Being Open and Accountable*' that requires public bodies to ensure information is '*...clear*'

accurate and complete... I consider the accuracy of the information provided to the Planning Committee in relation to the size of the existing garage, did not meet this principle. I consider this constitutes maladministration. I consider the complainants sustained the injustice of uncertainty and frustration. Therefore, I uphold this element of complaint.

38. However, I again have not identified any grounds on which I could question the merits of the decision. I am satisfied the Council would not have reached a different decision had these failures not occurred. Therefore, on balance, I consider the decision on the application would have been the same.

CONCLUSION

39. I received a complaint about the actions of the Council's Planning Service. The complainants raised concerns about the Council's consideration of a planning application to which they objected.

40. The investigation found maladministration in relation to the:

- Obtaining floor plans for the existing garage;
- Recording of rationale regarding the decision not to obtain floor plans;
- Recording the decision making process in respect of consideration of the Addendum to PPS 7;
- Recording the decision making process in respect of consideration of objections received; and
- Provision of information to the Planning Committee in relation to the size of the existing garage.

41. I am satisfied the maladministration identified caused the complainants to sustain the injustice of uncertainty and frustration. As well as causing them time and trouble by bringing their complaint to this office.

42. The investigation did not find maladministration in relation to the following matters:

- Openness and transparency of the processing of the application.

Recommendations

43. I recommend the Council provides to the complainants a written apology in accordance with NIPSO's 'Guidance on issuing an apology' (July 2019), for the injustice caused as a result of the maladministration identified (within **one month** of the date of this report).
44. For service improvement and to prevent future recurrence, I recommend the Council:-
- Shares the findings of this report with relevant staff for future learning;
 - Reminds relevant staff to clearly and accurately record all key decisions and the rationale for making those decisions;
 - Reviews how it measures existing structures prior to presenting those measurements to a Planning Committee, particularly in cases where measurements are disputed by objectors; and
 - Disseminates to relevant staff any learning identified following this review.
45. I recommend that the Council implements an action plan to incorporate the recommendations made and should provide me with an update within **three** months of the date of my final report. That action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that relevant staff have read and understood any related policies).
46. The Council accepted my findings and recommendations.

Appendix 1

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and relevant guidance, with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.

- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

