

Appendices: 1



NORTHAMPTON
BOROUGH COUNCIL

COUNCIL

25th January 2016

Agenda Status: Public

**Directorate: Borough Secretary and
Monitoring Officer**

Report Title	Report of the Local Government Ombudsman - Heritage Issues
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1. Purpose

- 1.1 To inform Full Council of a finding by the Local Government Ombudsman ('LGO') of fault causing injustice in respect of a complaint made by a member of the public.

2. Recommendations

Full Council is recommended to:

- 2.1 note the LGO's finding of fault on the part of the Council causing injustice, as set out in the Report of LGO at Appendix 1;
- 2.2 note the recommendations of the Local Government Ombudsman as set out in the Report of the LGO at Appendix 1; and
- 2.3 note and approve the action taken to date and the further actions proposed in order to implement the recommendations of the LGO.

3. Issues and Choices

3.1 Report Background

- 3.1.1 The complaint was made to the Ombudsman by a member of the public and related to a Planning Committee decision to grant planning permission for the extension of a café in parkland surrounding a Grade 1 listed building within a conservation area. The Complaint is summarised in the appended LGO report.

3.1.3 The LGO conducted an investigation and found fault causing injustice. In summary the investigation found that the Council had:

- failed to maintain a record of pre-planning advice
- validated a planning application without the necessary information (a Heritage Impact Assessment)
- failed to identify and apply the correct law and guidance.
- failed to consult with Historic England

3.1.4 A local planning authority has particular statutory duties when considering planning applications which affect a listed building or conservation area, which have the effect of giving special statutory status to heritage assets. There is also relevant guidance that should be considered when deciding if a planning application affects the setting of a listed building. As stated above, the LGO concluded that the Council failed to identify and apply the correct law (when deciding the question of harm to the setting of the listed building and the conservation area) and failed to apply the correct guidance (when deciding if the planning application affected the setting of a listed building).

3.1.5 The LGO made a number of recommendations. These are set out in the first column of the table below. The actions that the Council are taking or are proposing to take in relation to each recommendation are set out in the second column

LGO Recommendation	Council response/action
<p>a) <i>The Council should apologise to Mr B [the Complainant] for mishandling the planning application and for not treating his reasonable complaints about this properly.</i></p>	<p>A letter of apology was sent to the Complainant by the Council's Chief Executive on 25th November 2015.</p>
<p>b) <i>The Council should introduce, as a matter of urgency, conservation training for all its planning officers. Training is available from Historic England: training may be available elsewhere. The Council should confirm to us within three months of the date of this report that this has been done.</i></p>	<p>The Council arranged for a 2.5 hour training session to be provided by Dr Dale Dishon and Dr Ben Robinson of Historic England on 12th January 2016. This training session covered the following topics:</p> <ul style="list-style-type: none"> • Constructive Conservation in Practice • The Setting of Heritage Assets <p>The session was attended by:</p> <ul style="list-style-type: none"> • Planning Officers • Planning Registration staff <p>Notes from the training session have been made available electronically to all members of the Planning team for future</p>

	reference (and to ensure that any relevant officers who were not able to attend the training can access the materials).
c) <i>The Council should undertake an immediate review of its procedures for dealing with planning applications which affect heritage assets. It should put measures in place to ensure, and to monitor, that all applications affecting heritage assets are referred to its conservation officers and, on their advice, to Historic England. It should confirm to us within three months of the date of this report that this has been done.</i>	<p>The Council has reviewed its procedures for dealing with planning applications which affect heritage assets and the Interim Head of Planning has instructed the managers of the Development Management team to ensure that relevant applications are referred to the Council's conservation officers and when so advised, to Historic England. These procedures will be monitored through regular management team and 1-to-1 meetings. In addition the Planning Department are drafting a Protocol on identifying/dealing with heritage applications for approval by the Council's Monitoring Officer.</p> <p>The Council is taking steps to identify applications that may affect the setting of heritage assets as early as possible both through changes to its IT and GIS systems and through additional training for Registration and support staff. It is anticipated that these arrangements will be in place by April 2016.</p>
d) <i>The Council should maintain a record of all pre-planning advice. The record should be made available to the public when any subsequent planning application is validated. If it considers the advice confidential, a record of the reason for that decision should be placed on the public file.</i>	<p>The Council maintains a record of all pre-planning advice. The Interim Head of Planning has instructed that the relevant pre-planning advice should henceforth be made publicly available when any subsequent planning application is validated, unless there are clear reasons for the advice to be considered as confidential. In that case, a reason for the decision will be placed on the public file.</p>

3.1.6 In summary, Council officers have implemented or are in the process of implementing actions to follow all of the LGO recommendations.

3.1.7 This report has been made to Full Council by the Monitoring Officer because a finding of maladministration by the Local Ombudsman triggers the Monitoring Officer's responsibility under section 5 of the Local Government and Housing Act 1989 to report to the authority.

4. Implications (including financial implications)

4.1 Policy

4.1.1 None.

4.2 Resources and Risk

4.2.1 There are no direct resource implications arising from this report, save for the additional officer time required to implement the LGO recommendations and monitor the position going forwards.

4.2.2 Implementing the LGO recommendations effectively in practice, should reduce the risk of any future fault occurring in similar situations and causing injustice.

4.3 Legal

4.3.1 The LGO's report explains that the Ombudsman investigates complaints about 'maladministration' and 'service failure' and that in their report they have used the word 'fault' to refer to these. The LGO did find fault in this case. Part 3 of the Local Government Act 1974 (the "LGA 1974") deals with the Local Government Ombudsman process.

4.3.2 Section 31 of the LGA 1974 applies where the Ombudsman reports that there has been maladministration in connection with the exercise of the authority's administrative functions, or a failure in a service, or a failure to provide a service, which it was the function of the authority to provide. Section 31(2) requires the LGO report to be laid before the authority and makes it a duty of the authority to consider the report and notify the LGO of the action which the authority have taken or propose to take. (This must happen within three months of the date of receipt of the report or such longer period as the LGO may agree). The LGO will therefore be notified of the resolutions of Full Council made in connection with this Report.

4.3.3 As explained in the LGO's report, it cannot force the Council to follow its recommendation, but in practice, Councils usually do. The recommendations made by the LGO are actions that in their opinion, the Council should take to remedy any injustice sustained by the complainant and to prevent injustice being caused in the future by similar maladministration.

4.3.4 In relation to non-executive functions, the Monitoring Officer of a local authority has a duty under section 5 of the Local Government and Housing Act 1989 to prepare a report to the authority with respect to any proposal, decision or omission by the authority that has given rise to any such maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974. Receipt of the LGO report has therefore triggered this Monitoring Officer duty. (The LGO report in this case concerns determination of planning applications, which is a non-executive function).

4.3.5 The Monitoring Officer is required to consult so far as practicable with the Chief Executive and the Chief Finance Officer in preparing his section 5

report. Both statutory officers have been duly consulted. The authority has a duty to consider the Monitoring Officer's report.

4.4 Equality

4.4.1 There are no equality and diversity implications arising directly from this report.

4.5 Other Implications

4.5.1 None

5. Background Papers

5.5.1 None

Francis Fernandes
Borough Secretary and Monitoring Officer