

**BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK**

**CABINET SCRUTINY COMMITTEE**

**Minutes of a Meeting of the Cabinet Scrutiny Committee  
held on Wednesday 20 August 2008 at 6.00pm  
in the Committee Suite, King's Court, Chapel Street, King's Lynn.**

**PRESENT:**

Councillors D Collis (Chairman),  
B Ayres, P R Burall, T De Winton, I Gourlay (substitute for A Tyler),  
I Mack (Vice-Chairman), R Payn, D Pope, J M Tilbury

Members present by invitation:

Councillors N Daubney and Mrs V Spikings

Apologies for absence were received from Councillor A Tyler

**CSC22: MINUTES**

The minutes of the meeting held on Monday 23 June 2008 were agreed as a correct record and signed by the Chairman.

**CSC23: URGENT BUSINESS UNDER STANDING ORDER 7**

There was none.

**CSC24: DECLARATIONS OF INTEREST**

There was none.

**CSC25: MEMBERS PRESENT PURSUANT TO STANDING ORDER 34**

There was none.

**CSC26: CHAIRMAN'S CORRESPONDENCE**

There was none.

**CSC27: RESPONSE TO PREVIOUS COMMITTEE RECOMMENDATIONS**

There was none.

**CSC28: MATTERS CALLED-IN PURSUANT TO STANDING ORDER 12**

There was none.

CSC29: **SCRUTINY OF CABINET/PORTFOLIO HOLDERS' DECISIONS**

**(a) Cabinet Decisions – 5 August 2008**

The decisions/recommendations from the Cabinet meeting held on Tuesday 5 August 2008 were received.

(i) Response to Ombudsman Report on Investigation into Complaint no 07/B/03036

At its meeting on 5 August, Cabinet gave consideration to a report which considered the Ombudsman's report on an investigation into a complaint into the way the Council dealt with a planning application. It was reported that the Ombudsman had concluded that injustice had been caused to the Complainant as a result of maladministration by the Council and had made recommendations on the course of action which the Council should take. The Cabinet decision was as follows:

Recommended: That the Ombudsman recommendations in relation to the complaint be rejected.

Resolved: That Cabinet Member for Development and the Head of Development Services discuss practical measures which ensure that a system is put in place at the earliest opportunity to ensure that the plans submitted for Building Control consent are consistent with the approved planning permission drawings.

At the invitation of the Chairman, The Leader addressed the Committee. He advised that lengthy briefings had taken place with Planning Officers and the Portfolio Holder about this complaint to the Ombudsman which centred around the planning judgement which had been made, which was based on inaccurate drawings submitted by the applicant. The Ombudsman had ruled originally that it was unreasonable for officers to know intimately every application site and that the Council's offer in settlement of the complaint was fair and reasonable. Following further representations from the Complainant's solicitor, the Ombudsman had changed his judgement and made the recommendations as outlined in the report to Cabinet, although there was no new information on which such a judgement could be based. The Leader stated that a serious accusation of maladministration had been made against the Council and the officers involved, which, in his view, was unacceptable. The Cabinet had taken the view that that it would not accept the Ombudsman's judgement, which was considered to be unreasonable and inaccurate. The Leader stated that he would have been open to trying to resolve the matter through reasonable negotiation with the Complainant based on the facts.

The Chairman drew Members' attention to the summary in the Ombudsman's report, which was read out. He highlighted the issues which should be considered, including the possible financial losses which

had been referred to due to loss of amenity and property value and the inaccuracies of the submitted plan, a copy of which had been circulated.

Views were expressed in support of the Cabinet recommendation that no compensation should be paid. The impact on the value of the Complainant's property and the loss of amenity and light were questioned. With regard to the preparation of plans, it was considered that the agent who submitted the plan should be expected to bear some responsibility and there was a discussion about ways in which this might be addressed in the future.

Views were expressed by some Members that if a mistake had been made then this should be acknowledged and the Council should accept the Ombudsman's finding and recommendations. Lessons should be learnt and appropriate measures put in place to ensure it did not happen again. Reference was made to the Ombudsman's report, which identified that as soon as the Complainant became aware of the problem, this was brought to the Council's attention. A letter sent to the Complainant by the Council acknowledged that an error had been made.

Reference was made to the Ombudsman's original rejection of the complaint, for which no documentary evidence had been provided to the Committee. At the request of the Chairman, the Planning Control Manager read an extract from a letter from the Ombudsman dated 14 March 2007, setting out his original findings and advising that the investigation was being discontinued and file closed. It was the Ombudsman's view that, in view of the fact that the Council did not make the error in the drawings, he could not press the Council to commission a before and after settlement and he did not believe that more than the £2500 which had been offered could be achieved. The Planning Control Manager advised that the case had been reopened by the Ombudsman on 14 June 2007 following further representations from the Complainant's solicitor.

It was highlighted that the Personal Specification for the planning officer post included essential requirements for the post holder to have a Certificate in Development Control Studies and must be able to read and interpret maps and plans. Neither of these requirements was met by the post holder. The Planning Control Manager felt that the member of staff was able to read and interpret maps and plans but did not have the Certificate in Development Control Studies. He explained that at this time recruitment and retention of qualified planning officers was particularly difficult and a 'grow your own' policy was seen as good practice and used by many local authorities to train and develop staff internally, supported by qualified planners.

Concerns were highlighted about whether it should have been possible to identify the error in the plan during the site visit, taking into account the street scene and relationship to adjacent buildings. The Planning Control Manager stated that he was not convinced that the difference in size was

an easy mistake to spot. The Chairman did not accept that it would not be possible to judge the difference between 7 metres and 11 metres.

A query was raised as to what the options would be for the Complainant if the Cabinet decision was upheld at Council. The Senior Solicitor advised that the Council did not have a duty of care to the Complainant. If the architect had been negligent then the complainant could bring an action against the neighbour, who in turn could make a claim against the architect. She advised that from the information she had read, there was no recourse for the complainant to bring an action against the Council in the County Court.

The Leader reiterated that it was unreasonable to expect the Planning Officers to verify the plans with respect to the dimensions of all neighbouring properties for every application received. He stated that some of the drawings which were submitted were not good and he believed that the Ombudsman recognised this in the initial judgement. He considered that the Council should not accept the finding of maladministration which he felt was unjustified. Reference was made to the Ombudsman's letter which stated that it was his view that the £2500 offered represented a fair and reasonable local settlement of the complaint.

Councillor Burall stated that he believed a decision by the Council to accept the Ombudsman's findings and recommendations would not set a precedent. He reminded Members that this matter had been raised at a national level and urged that a clear ruling should be sought through the Local Government Association (LGA). He felt that there should be a legal responsibility on anyone submitting an application to ensure that plans were accurate and it was unreasonable for Local Authorities to accept this extra burden. He stated that the Ombudsman was an independent arbiter and that his recommendations should be accepted. He did not consider that the Council should be judge and jury in its own case. He then made the following proposed recommendations:

“(a) To accept the recommendations of the Ombudsman.

(b) To work with the LGA to facilitate a national agreement with the Ombudsman and the Government on what can reasonable be expected of planning authorities in checking the accuracy of submitted plans and whether the prime responsibility for the accuracy of submitted plans should lie with the applicant or the Authority.”

At the invitation of the Chairman, Councillor Mrs Spikings, Portfolio Holder for Development, addressed the Committee. She stated that when a professional agent was employed to submit an application on behalf of a client, it was reasonable for the Council to accept that the plans were correct. The workload of the Planning Department was very high in terms of the number of applications dealt with and this was just one application. She stated that it was unfortunate that the error had not been noticed during the visit by the Case Officer, but felt that the error

was the responsibility of the agent. Reference was made to whether it might be possible to add a disclaimer in the future. The Portfolio Holder for Development explained that the problem had occurred at a time when the Department had been under particular pressure due to the shortage of planners. However, lessons had been learnt and changes had been introduced in the Planning Department to provide greater support and ongoing training to unqualified staff.

The Chairman referred to the proposal which had been made by Councillor Burall and called for the proposal to be seconded. Councillor Tilbury indicated he would be willing to second part (b) of the recommendation.

The Leader stated that in his view the Committee was seeking to make a policy and requested clarification of the role of the Committee.

The Senior Solicitor advised that the Committee was able to scrutinise Cabinet decisions or recommendations to Council, but that policy development was the remit of the Policy Review and Development Panels. The Committee could make a recommendation to amend the Cabinet recommendation, but she considered that there could be a danger of trying to introduce a policy.

Councillor Mack suggested that part (b) be added to the Cabinet resolution as an additional sentence.

Councillor De Winton proposed that the Cabinet resolution be amended to read "That Cabinet Member for Development and the Head of Development Services discuss practical measures which ensure that a system is put in place to prevent this situation from happening again."

The Chief Executive advised that with regard to part (b) of Councillor Burall's proposal, this was already in the process of happening. Concerns had already been taken up by the Planning Department with the RTPI, which would he considered would undoubtedly extend into discussions with the LGA to push for a solution. The Committee accepted this assurance that the concerns were being addressed.

With regard to the Ombudsman's recommendations, the Chief Executive highlighted that the recommendation (c) had already been addressed by the Planning Department. It was not denied that a mistake had been made, but it was not accepted that there had been any maladministration.

Councillor Mack made reference to the original complaint when an offer of £2500 had been made as a gesture of goodwill. He expressed concern that the Cabinet recommendation did not include such an offer and stated that he felt it was unlikely that the matter would not be brought to a conclusion.

Councillor Burall then withdrew part (b) of his proposal. Part (a) "To accept the recommendations of the Ombudsman" was seconded by

Councillor Mack. On being put to the vote the proposal was lost and the Cabinet recommendation therefore remains unchanged.

**(b) Portfolio Holders' Decisions made under Delegated Powers.**

The updated list of Portfolio Holders' Decisions made under Delegated Powers was tabled and the Committee noted the contents.

CSC30: **DATE OF NEXT MEETING**

The Committee noted the date of the next meeting was scheduled for **Wednesday 17 September 2008** at 6.00 pm.

**Meeting closed at 7.12 pm**