

Part A

**Report to:** Cabinet

**Date of meeting:** Monday, 3 October 2022

**Report author:** Group Head of Democracy and Governance

**Title:** Ombudsman Decision

## 1.0 Summary

1.1 Under the Local Government and Housing Act 1989 the council's Monitoring Officer is legally obliged to make a report to Cabinet of any finding of fault by the Local Government and Social Care Ombudsman.

1.2 On 23 August 2022 the council received the final decision of the Ombudsman in relation to a complaint regarding Community Protection and Development Management. The anonymised decision is attached as appendix 1.

## 2.0 Risks

2.1

<b>Nature of risk</b>	<b>Consequence</b>	<b>Suggested Control Measures</b>	<b>Response</b> (treat, tolerate, terminate or transfer)	<b>Risk Rating</b> (combination of severity and likelihood)
That the lessons learned are not followed	Similar findings of fault leading to a loss of reputation	That the recommendation be followed.	Treat	2

## 3.0 Recommendations

3.1 That the decision be noted.

### **Further information:**

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#### 4.0 **Detailed proposal**

- 4.1 Under s5A of the Local Government and Housing Act 1989 the council's Monitoring Officer is legally obliged to report to Cabinet any findings of fault by the Local Government and Social Care Ombudsman.
- 4.2 On 23 August the council received the Ombudsman's final decision in relation to a complaint that the council had failed to investigate a resident's reports of a statutory noise nuisance. The anonymised decision is attached at appendix 1 and sets out the background.
- 4.3 The complaint relates primarily to the actions of Community Protection, however the matter also involved Development Management as the premises the noise was emanating from was being investigated by Planning Enforcement and retrospective planning applications were sought.
- 4.4 The analysis of the complaint and the Ombudsman's reasoning is set out in paragraphs 25-31 of the appendix. The Ombudsman found fault because of the significant gaps in the council's actions which caused long periods of time where the issue was not addressed. The Ombudsman also considered that this caused the complainant significant distress.
- 4.5 The Ombudsman ordered that the council provide a written apology to the complainant. This has been done. Pay the complainant £500 in recognition of the distress caused. This has been done. Review how the council ensures investigations are carried out in a timely manner. The Environmental Health Manager has advised that he has already introduced increased case management monitoring to try to avoid a similar situation recurring and the findings are being shared with the team to learn lessons. This will include more liaison with Planning to ensure active case management that responds to changing circumstance and timelines. Also the noise nuisance has now been resolved by the relocation of the offending refrigeration and air conditioning units and the former being enclosed.
- 4.6 The Associate Director Housing and Well Being comments that the Ombudsman investigation concluded that the council had carried out site visits to establish if a nuisance existed, and had fulfilled its duty to investigate statutory nuisance. It was accepted that the council had worked with the owner of the restaurant to reach a resolution, and had identified that improvements were required. An agreement was reached that the air conditioning units would be turned off by 7pm so not causing sleep disturbance. The refrigeration units could not be controlled in the same way as this would affect food storage which is required to be kept within the correct temperature range. These units were not a continuous source of noise, they switch on and off as required dependent on demand. Despite this however, throughout the night, this would still be a nuisance. The reality in this case was that to abate the nuisance in the short term, without the works required being undertaken as per the

planning applications, would have required the business to stop operating as it would have comprised health and safety.

The nuisance is now abated as a result of the work undertaken by the council, however, the time taken to achieve this without a legal requirement in place was too long and impacted the resident. Further details are provided below.

The attenuation of the noise required a planning application to be submitted due to external changes. Planning applications were submitted in April 2021 and a revised application including more noise specific information was submitted in June 2021. The Community Protection team reviewed and commented on the application in September 2021. The noise was still ongoing at this point, and whilst the case officer regarded it to be a statutory nuisance a decision was taken, after consideration, that the works to remedy it were underway through the planning process, and therefore a Notice was not served. The thought process on this was that any Notice would legally have to give sufficient time to progress a solution, and in this case it would require planning permission and so a Notice could slow the resolution underway if appealed and potentially distract from the positive steps being taken. Officers always work with businesses, or others causing a nuisance, to try and find a solution without the need for legal action, and must balance the benefits of serving a notice against the potential for a case to get stuck in a legal appeal process that could cause significant delays and cost businesses funds that could be spent on attenuation.

Unfortunately, however the planning process was much slower than the officer anticipated and the decision was not reviewed. Planning permission was granted in February 2022 with 2 months further for works to be completed. The units were all moved to a new location and acoustic enclosures fitted. Whilst these actions fully abated the nuisance they were not completed until June 2022. Whilst it may not have stopped the noise earlier, service of a Notice would have made clear the council's position formally and perhaps speeded the processes to remove the nuisance. The impact of not doing this clearly led to an ongoing impact on the resident affected, for which we have sincerely apologised. If a Notice was served the business could have appealed, and a Court could then have decided the reasonableness of the requirement or may have taken the decision to either uphold the notice, uphold the notice with amendments or accept the appeal. This would have taken several months, perhaps years for a court hearing, but the position of the council would have been clear.

Active case management, and liaison with the Planning team is being improved to ensure that in future cases, whilst it is important all options and impacts are considered, cases are kept under review and decisions changed where appropriate.

## 5.0 **Implications**

### 5.1 **Financial**

5.1.1 The Shared Director of Finance comments that the compensation will be met from the service's existing budgets.

### 5.2 **Legal Issues** (Monitoring Officer)

5.2.1 The Group Head of Democracy and Governance comments that all findings of fault are required to be reported to Cabinet.

### 5.3 **Equalities, Human Rights and Data Protection**

5.3.1 Having had regard to the council's obligations under s149, it is considered there are no direct equalities implications in this report.

### 5.4 **Staffing**

5.4.1 No implications

### 5.5 **Accommodation**

5.5.1 No implications

### 5.6 **Community Safety/Crime and Disorder**

5.6.1 No implications

### 5.7 **Sustainability**

5.7.1 No implications.

## **Appendices**

- Appendix 1 Ombudsman's final decision.

## **Background papers**

No papers were used in the preparation of this report.