

## Part A

**Report to: Development Management Committee**

**Date of meeting: 14 May 2024**

**Report author: Monitoring Officer**

**Title: Ombudsman Complaint**

### 1.0 Summary

1.1 On 24 April 2024 the council received a final decision in relation to a Local Government and Social Care Ombudsman's Complaint related to the discharge of a planning condition.

1.2 Under the Local Government and Housing Act 1989 the council's Monitoring Officer is legally obliged to report any finding of fault by the Local Government and Social Care Ombudsman. Most reports usually go to Cabinet, but this complaint related to a Development Management matter which is a non-executive function, and therefore needs to be reported to the relevant committee which is this Committee.

1.3 The Local Government and Social Care Ombudsman's anonymised decision is attached as appendix 1.

1.4 The Committee is asked to note the decision.

### 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 recommendations be followed	Treat	2

### 3.0 Recommendations

3.1 That the decision be noted.

**Further information:**

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Phone

**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 any findings of fault made by the Local Government and Social Care Ombudsman. Normally such reports are made to Cabinet but as the fault in this case relates to a non-executive function it is coming to Development Management as the committee responsible for the matter.
- 4.2 On 24 April 2024 the council received a final decision on a complaint relating to the discharge of a planning condition.
- 4.3 A copy of the final decision is attached at appendix 1. The complaint relates to a development that was granted on appeal by the Planning Inspectorate. The application was for an extension with a raised patio and steps down to a garden. In granting the permission the Inspector imposed a condition that the development could not take place until a full arboricultural survey and impact assessment had been sent to the council and approved, due to protected trees in the vicinity, including a neighbour's garden.
- 4.4 A survey was sent and review by the council's tree manager and was found to be unacceptable, so the discharge of condition was refused. A further survey and assessment were submitted, and the Development Management case officer was given to understand by the Tree Officer that the survey and impact assessment was now acceptable and discharged the condition. Unfortunately, he had not seen the assessment before he did this, and it subsequently transpired that it was the original refused assessment with a minor amendment to a schedule.
- 4.5 The complaint was made by the owners of the neighbouring property as they felt their trees would be adversely affected. The council accepted that the condition had been discharged without reference to an updated report. It is this aspect of the complaint where fault was found.
- 4.6 The Local Government and Social Care Ombudsman has required the council to apologise to the complainants and supply them with details of the tree protection and mitigation measures agreed with the neighbour. To look at the process for

discharging conditions to ensure if the council requires amendments before approval they have been made, and to ensure officers note the evidence on which they are basing their decisions.

- 4.7 The Associate Director of Planning Infrastructure and the Economy comments that the Development Management team discharge a large number of planning conditions each year and errors of this nature are extremely rare. It is accepted, and unfortunate, that on this occasion due to human error the arboricultural report submitted was not subject to the level of scrutiny required and that this resulted in distress to the neighbour. The findings of the Ombudsman are accepted and the agreed actions will be implemented as soon as possible.

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- 4.8 All decisions made by the Local Government and Social Care Ombudsman are published on their website in an anonymised form.

## 5.0 **Implications**

### 5.1 **Financial**

- 5.1.1 The Chief Finance Officer comments that there are no direct financial implications arising from the decision of the Local Government and Social Care Ombudsman.

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

- 5.2.1 The Monitoring Officer comments that all findings of fault are required to be reported to either council or cabinet as appropriate.

### 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 equalities implications.

### 5.4 **Staffing**

- 5.4.1 Staff will be reminded of the need to provide evidence for their decisions and to check reports.

### 5.5 **Accommodation**

- 5.5.1 Not applicable

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

5.6.1 Not applicable

5.7 **Sustainability**

5.7.1 Not applicable

### **Appendices**

- Local Government And Social Care Ombudsman decision

### **Background papers**

No papers were used in the preparation of this report.