

ISLE OF ANGLESEY COUNTY COUNCIL

MEETING:	FULL COUNCIL
DATE:	9 JUNE 2011
TITLE OF REPORT:	OMBUDSMAN'S REPORT ON THE INVESTIGATION OF A COMPLAINT BY MR W AGAINST THE ISLE OF ANGLESEY COUNTY COUNCIL (CASE 200901501)
REPORT BY:	INTERIM CHIEF EXECUTIVE
PURPOSE OF REPORT:	FOR FULL COUNCIL TO CONSIDER THE OMBUDSMAN'S REPORT AND RECOMMENDATIONS

1. Introduction

- 1.1 On 25 March 2011 the Public Services Ombudsman for Wales ("the Ombudsman") issued a report ("the Report") pursuant to section 16 of the Public Services Ombudsman (Wales) Act 2005 ("the Act") in respect of his investigation into a complaint made against the Council.
- 1.2 In the Report the Ombudsman makes both a finding of maladministration against the Council and recommendations to the Council. The Report has been made public and requires the Council to give consideration to the Report, its findings and its recommendations within three months of the date of the Report. The Report is presented to this meeting so that full Council may consider the requirements of the Report and respond accordingly to the Ombudsman.
- 1.3 The Report is attached as an Appendix to this report. The Report refers to the complainant as Mr. W. Members will know that complainants are entitled to anonymity and so members who know or believe that they know the identity of the complainant are respectfully reminded that they should not, either directly or indirectly, identify the complainant or give any information which would help identify the complainant (e.g. by identifying either Site A or Site B) during any statement on or debate of this matter in public session.
- 1.4 This report is presented in public session. Should it become necessary either to divulge information not contained in the Ombudsman's Report or that members require legal advice during consideration of these matters then it may be necessary to resolve to exclude the public and press pursuant to Schedule 12A of the Local Government Act 1972 as amended.

2. The Ombudsman's Report

- 2.1 The Report is dated 25 March 2011 and the Council has given the Report the required degree and forms of publicity required by the Ombudsman. These were by press advert, website notice and the making of a copy available at the Council's Officers for public inspection.

- 2.2 The Report contains a summary at page 2 and the facts of the matter are set out in greater detail in the body of the Report. The Ombudsman sets out his conclusions at paragraphs 88 to 99 of his Report (pages 33 to 40) and sets out his recommendations at paragraphs 100 to 103 (pages 40 and 41).
- 2.3 The Ombudsman concludes that the Council was guilty of maladministration as follows:
- 2.3.1 A failure to adequately assess the impact of a development on Site B which was detrimental to highway safety (paragraph 91 at page 34 of the Report), and
- 2.3.2 A failure to address vigorously the problem created by the above maladministration which was compounded by a failure to respond adequately to correspondence from Mr. W's agent (paragraph 95 at page 35 of the Report).
- 2.4 Your Officers accept the Ombudsman's findings of maladministration and will recommend that members resolve to accept these findings also.
- 2.5 The Ombudsman makes the following recommendations:
- 2.5.1 That the Council pays a sum of £30,626 to Mr. W's company by way of two payments and subject to certain stated conditions. This is a sum to compensate the company for its estimated business losses from 1 September 2008 to end of October 2010 for Site A (first bullet point of paragraph 101 at page 40 of the Report). Whilst the Report recommends that the first payment, amounting to £20,000, be made "within 28 days of the date of the Report", the Council is given 3 months to consider the Report. It is assumed that what is meant is that the first payment be made within 28 days of the Council having considered the Report.
- 2.5.2 That the Council should reimburse the company the difference between the estimated set up costs for Site A mentioned in the Report and the actual costs incurred by the company within 28 days of submitting proof of payment (second bullet point of paragraph 101 of the Report).
- 2.5.3 That the Council pays a sum of £1,500 to Mr. W within 28 days in respect of his costs in pursuing the matter with the Council and the Ombudsman (third bullet point at paragraph 101 of the Report).
- 2.5.4 That the Report be considered by the Commissioners (paragraph 102 of the Report).
- 2.6 Your Officers accept the Ombudsman's recommendations as to compensation and will recommend that members resolve to accept these recommendations also.
- 2.8 As regards the recommendation that the Report be considered by the Commissioners, then this is precluded as a matter of law. The Commissioners principal function in law is to exercise the Council's executive functions in accordance with the Minister's Direction dated 16 March 2011 and the relevant legislation. However, consideration of a report by the Ombudsman is precluded from being an executive function by secondary legislation (paragraph 8 of Section I of Schedule 1 to the 2007 Regulations). Hence the need to present this report to

full Council. Notwithstanding this prohibition, your Officers suggest an alternative course of action as part of the recommendations which, it is to be hoped; will address the Ombudsman's concerns in making his recommendation.

3. The Findings of Maladministration

- 3.1 The Report makes two findings of maladministration as described in paragraph 2.3 above. As already confirmed, your officers accept those findings of maladministration and recommend to full Council that it, too, accepts those findings.
- 3.2 To have granted permission for the increased height of the wall at Site B without realizing that the development would have posed, at the very least, a detriment to highway safety is an obvious mistake and maladministration.
- 3.3 Not to have expeditiously addressed and obtained a quick resolution of the problem posed by the height of the wall at Site B once that problem and its consequences became known is also a mistake amounting to maladministration.
- 3.4 In accepting the findings of maladministration in the Report full Council will, no doubt, wish to endorse that the Head of Service (Planning and Public Protection) and the Head of Service (Highways and Waste Management) review both:
 - 3.4.1 The relevant development control practices in their respective Departments, and
 - 3.4.2 Their Departmental procedures in responding to complaints and in addressing and expeditiously implementing proposed solutions to existing complaints so as to mitigate identified problems.

4. Quantifying Compensation

- 4.1 The Ombudsman has quantified the amount of compensation due to the company as being £30,626 and recommends that that sum be paid in two installments (first bullet point of paragraph 101 of the Report).
- 4.2 The Ombudsman further recommends that the increased costs of implementing the permission for Site A due to the maladministration should be paid for by the Council (second bullet point of paragraph 101 of the Report).
- 4.3 The maladministration delayed both the issuing of the permission for Site A and the company's ability to implement that permission. Both of these delays will have caused loss to the company.
- 4.4 The Ombudsman has given careful consideration to formulating his recommendations for compensation and based these on both financial details obtained from the company and separate financial advice from his Financial Adviser.
- 4.5 Your officers are of the view that the seriousness of the maladministration will have caused losses to the company and that these losses should be compensated by

the Council. Your officers, therefore, recommend that the Council accept the Ombudsman's recommendations for compensating the company.

- 4.6 In addition the Ombudsman recommends that the Council pays a sum of £1,500 to Mr. W within 28 days in respect of his costs in pursuing the matter with the Council and the Ombudsman. Your officers recommend that the Council accept the Ombudsman's recommendation in this respect.

5. Recommendations

- 5.1 Full Council is recommended to consider the Ombudsman's Report and to resolve as follows:
- 5.1.1 To accept and agree with the Ombudsman's Report, his findings and his recommendations.
 - 5.1.2 To adopt the recommendations set out in paragraph 101 of the Report (pages 40 and 41) and to authorize your officers to implement those recommendations within the timescales stated by the Ombudsman.
 - 5.1.3 As to the recommendation contained in paragraph 102 of the Report, that the Head of Service (Planning and Public Protection) and the Head of Service (Highways and Waste Management) review the relevant development control practices in their respective Departments and their Departmental procedures in responding to complaints and in addressing and expeditiously implementing proposed solutions to existing complaints so as to mitigate identified problems. That they report their findings to the Commissioners responsible for their respective Services and that they report their findings to the Board of Commissioners.
 - 5.1.4 Although not a specific recommendation by the Ombudsman, full Council should authorize the Interim Chief Executive to apologize to Mr. W for the maladministration.

Background Papers

None

APPENDIX