

# REPORT OF THE SERVICE DIRECTOR REGENERATION AND CULTURE

## AUDIT AND GOVERNANCE COMMITTEE - 28 JULY 2021

**Purpose:** To review the process followed in addressing a complaint from Mr X, its subsequent referral to the LGSCO, decisions taken by the LGSCO Investigating Officer and actions taken by BMBC.

### 1. Original Complaint made to Barnsley Council

- 1.1 On 8 August 2020, Mr X made a complaint to Barnsley Council about planning permission having been issued to a residential developer Avant Homes to build housing on a site close to his main residence, on a sloping site where he perceived flooding to be a risk, having previously registered an objection to the planning application for this development in 2019 in which he identified concerns about the potential of flooding and that he believed it was the Council's duty of care to protect those living around the site.
- 1.2 When he experienced some flooding in his front garden while the developer was onsite in the summer of 2019, Mr X contacted the Council and experienced some difficulties with locating the right person to speak to within the Council, which led to him being finally directed to the Planning team. His complaint of 8 August focussed on his view that:
  - The Council had failed to consider a preventative approach to the flooding risks of the site during the planning application process
  - The Council had failed to thoroughly investigate and act upon a report of concern of a developer's actions in a timely manor

The Group Leader Building Control was responsible for looking into the complaint.

- 1.3 On 14 October 2020, following a thorough investigation, the Group Leader Building Control wrote to Mr X and in some detail responded to the two key substantive points in the complaint (see attachment 'Formal Response to Mr X, 14 October 2020'). The key points made in response were that:
  - There was a key requirement for Avant Homes, in their site preparation works, to ensure existing grassed areas be stripped in small phases and it was evident that Avant Homes did not abide by this guidance. This was identified as the primary cause of the resultant flooding that occurred from the site onto Mr X's property. The Group Leader Building Control was clear with Mr X that it is not generally a requirement for temporary drainage schemes to be considered within a construction method statement and that there was no requirement on the Council to regulate such matters under the planning control system. The conclusion was that there was no statutory failure by the Council under the planning process with regards to its failure to impose conditions/requirements in respect of the prevention of flooding from the site during the construction process. His letter made it clear that

with regards to Avant development, a temporary drainage strategy was in place which clearly had not been adhered to and that responsibility sat with Avant Homes for this failure.

- He also stressed that the duty of care was on Avant to take such reasonable care to carry out its site operations to a standard to prevent foreseeable harm to others. But that, having spoken to the relevant planning officers and looked at various communications, he was satisfied that they had made a number of personal interventions in endeavouring to get Avant's to deal with Mr X's concerns.

- 1.4 The Group Leader Building Control also laid out in his letter the key lessons learnt by the Planning team in investigating the complaint, as follows:

*“Consideration should be given to more clearly articulating that, ultimately, it is the developer who is liable and responsibility for temporary drainage measures in order to avoid any flooding and damage to neighbouring land and property and that such matters are not material planning considerations*

*Notwithstanding that it is the developer who is ultimately liable, consideration should be given to the inclusion of a separate condition, or provision within the construction method statement, in respect of the effective management of temporary surface water during construction particularly where so alerted to relevant concerns. The threshold for the adoption of such control would be at the decision of the service but would be envisaged to be to all ‘major’ applications. Where appropriate, this could include whether there is a requirement for a fully engineered design solution.*

*That the Planning Service as a whole review its signposting of published telephone contacts and service access channels.”*

(Page 4, Formal response to Mr X, 14 October 2020)

## **2. Stage Two Investigation**

- 2.1 Mr X subsequently requested that his complaint pass to a Stage Two investigation and at the end of October he was contacted by the member of the Customer Service team responsible for facilitating complaints that progress to Stage 2 Review of the Council's Complaints Procedure
- 2.2 Following consultation with the Executive Director, the Customer service team member contacted Mr X on 20 November to say that having considered his correspondence, she did not feel that there are any outstanding gaps between the response and what have raised to constitute progressing this to a stage 2 review and that the matters raised were more comments in response to the stage 1 response and follow up questions rather than matters which had not been addressed. She also advised that she was unable to pursue the complaint any further but that all questions, comments and concerns had been highlighted with the Service for their attention and consideration. He was advised that he had the right to pursue his complaint directly with the Local Government and Social Care Ombudsman if he wished. However due to an email error, this email was not received by Mr X until 11 January 2021.

2.3 On 18 January 2021, he contacted the LGSCO to ask them to investigate the handling of his complaint by Barnsley Council and was passed to the Ombudsman's investigation team for consideration. We provided the Ombudsman with a copy of our stage 1 and stage 2 response to this complaint

### **3. LGSCO Investigation**

3.1 On 28 April 2021, BMBC Chief Executive received a letter from the LGSCO to formally notify the Council that they were proposing to investigate Mr X's complaint and that an investigator had been allocated. The letter also laid out the process the Investigator would go through, i.e. firstly considering the case and then contacting with a draft decision for comment.

3.2 On 20 May 2020, The Investigator emailed the Council asking if he could read the committee report that included details of the Council's consideration of drainage issues on the Lidgett Lane site (2013/1006) but wasn't able to locate it on the Council's website. He asked that a copy be sent to him by email or via a link as soon as possible. He also advised that the Ombudsman recommends that Council's keep delegated, and committee reports along with other documents relating to all applications on its website, as without access to the reports it is difficult for the LGSCO (or the public) to understand how a decision was made. He indicated that, 'in addition to sending him a copy/link to this report, that BMBC would consider following the Ombudsman's recommendation with regards to publishing all its reports. A link with the relevant reports in was sent to the Investigator on 21 May.

3.3 On 9 June, he contacted the Head of Planning and Building Control to ask for a discussion with him about how the Council maintained records of its Planning Committee reports on its website portal. This was an issue he wanted to address within his report but wanted to give BMBC a chance to comment first.

3.4 The Head of Planning and Building Control spoke with the Investigator later that day. The conversation identified that, broadly, the Investigator had no issues in relation to Mr X's complaint regarding the drainage and associated enforcement (or lack thereof) considerations but had identified fault in terms of information which BMBC publish online. This can be split into 3 categories:

- Issues with some info from our back-office system not being carried through to our front end Planning Explorer webpage.
- Not publishing Consultee Responses on the website
- Not publishing delegated officer reports on the website

In response, the Head of Planning and Building Control confirmed the following:

- The Planning team intend to replace their back-office system but, in the meantime, officers have identified a work around and are now implementing this.

- They deliberately chose not to do this because they were concerned about the possible need to redact info, which would have been incredibly time consuming and didn't think this was something they could prioritise over and above other duties/tasks.
- They've held off doing this but could start publishing the delegated reports straight away, with no requirement to go back and publish reports for apps already determined.

#### 4. LGSCO Report

4.1 The final decision report from the LGSCO was received on 2<sup>nd</sup> July.

In summary, it found that:

*“The Council followed the decision-making process we would expect and so I find no fault in its decision to approve the variation application. However, I did find evidence of fault in the way the Council keeps and publishes its planning records. The faults I have found, particularly the failure to publish key documents has caused confusion and frustration for Mr X. I will recommend a remedy for the injustice caused by the fault I have found.”*

The findings of the draft report were accepted by the Council's Planning team and the Service Director Regeneration and Culture, and all comments on the draft submitted at the end of June.

The findings from the report and its recommendations were accepted by the Service and agreement was made to undertake the various recommendations.

- 4.2 These recommendations were assigned to the Service Director Regeneration and Culture and the Head of Planning and Building Control for co-ordination and completion via our task allocation system. A copy of this task allocation was also sent to the Executive Director to ensure compliance with timescales. Evidence of completion must be provided so that this can be shared with the Ombudsman's office.
- 4.3 These tasks must be completed within the stated time otherwise the Investigator will record that we have failed to complete them within timescale, and this will be reported upon within their Annual Review letter to the Chief Executive. The Investigator also asked that all involved in this be reminded that the law says that investigations must be conducted in private, and the complaint and information about it must not be disclosed to third parties.
- 4.4 On 5 July the Service Director Regeneration and Culture agreed that the actions would be divided up as follows.

<b>Recommended Timescale</b>	<b>Action</b>	<b>Lead</b>	<b>Progress Made as at 19 July 2021</b>
To be completed by 31 July	Apologise to Mr X for the confusion and frustration caused by the failure to keep and publish proper records	Head of Planning and Building Control	The Head of Planning and Building Control emailed Mr X on 15 July and received a short email of reply on 16 July with the following response: 'The apology is welcome, appreciated and fully accepted. Please don't underestimate the power of an apology!'
Completed by 31 July	Pay Mr X £150 for his time and trouble in coming to the Ombudsman	Head of Planning and Building Control	The Head of Planning and Building Control also requested Mr X's bank details to make the bank transfer in his email of 15 July, and these were provided to our Finance colleagues by return by Mr X on 16 July. Responsibility sits with Finance to make the payment. The Head of Planning and Building Control and the Service Director Regeneration and Culture will continue to check that payment has been made within the deadline
Completed by 31 July	Rectify BMBC Planning and Building Control website records as they relate to this complaint, so Mr X can see how the Council made its decision on the variation application and condition discharge decisions and the documents it relied upon	Head of Planning and Building Control and planning team	In the email of 15 July, the Head of Planning and Building Control also advised Mr X that 'Moving forward we are publishing a letter for all such applications we determine as per the Inspector's recommendations'

<b>Recommended Timescale</b>	<b>Action</b>	<b>Lead</b>	<b>Progress Made as at 19 July 2021</b>
Within the next three months (completed by 30 Sep)	Resolve the document management issue and publish documents in line with the regulations	Head of Planning and Building Control and team	The document management issue has now been rectified
Within the next three months (completed by 30 Sep)	Establish temporary solutions or 'work arounds' to ensure that as many documents as possible that should be available under the regulations are published on its website	Head of Planning and Building Control and team to put interim solution in place and advise of timescale	Temporary solutions and workarounds were put in place in June following receipt of the LGSCO's recommendations
Within the next three months (completed by 30 Sep)	Check that other Council services whose work is caught by the regulations and ensure they are operating lawfully	Head of Planning and Building Control	The Head of Planning and Building Control is currently determining whether other teams in the Council are affected by the recommendations and will identify any further requirements to publish reports
Within the next three months (completed by 30 Sep)	Refer the above recommendations to the Audit and Governance Committee for monitoring and to check compliance	Service Director Regeneration and Culture	Action discharged via this report and the subsequent scrutiny at Audit and Governance Committee 28 July

## **5. Recommendation**

The Committee is asked to note the details of the report and the proposed action plan and associated deadlines to comply with the recommendations of the LGSCO's report.

Contact Officer Service Director Regeneration and Culture

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Date 20<sup>th</sup> July 2021