

(Received and adopted by the City Council on 9 January 2018)

APPEALS PANEL 3

FRIDAY 17 NOVEMBER 2017 AT 10.30AM

PRESENT: Councillors Mrs Birks, Collier and Harid

OFFICERS: Legal Services Manager
Town Clerk and Chief Executive
Corporate Director of Economic Development
Development Manager
Planning Officer

ALSO

PRESENT: Complainants
Complainants Legal Advisor

AP3.1/17 APPOINTMENT OF CHAIRMAN

Consideration was given to the role of Chairman of Appeals Panel 3 for the 2017/18 Municipal Year.

It was moved by Councillor Birks, seconded by Councillor Collier, and:

RESOLVED – That Councillor Harid be appointed as Chairman of Appeals Panel 3 for the Municipal Year 2017/18.

Councillor Harid thereupon took the Chair.

AP3.2/17 APOLOGIES FOR ABSENCE

There were no apologies for absence.

AP3.3/17 DECLARATIONS OF INTEREST

There were no declarations of interest relative to the complaint.

AP3.4/17 PUBLIC AND PRESS

The Panel was asked to consider whether the complaint should be heard in public or in private.

The Legal Services Manager explained to the Panel that it was the presumption that a Local Authority meeting would be open to public and press unless either the public must be excluded because confidential information might be disclosed or one of the statutory exemptions applied.

In the case of this complaint the proper officer, when arranging the meeting, gave consideration to whether an exemption applied and it was determined that the relevant exemption was that information relating to an individual may be disclosed. Individuals being the complainants, the officers, members and other individuals at other authorities.

It was for the Panel to consider and resolve whether to hear the item in Part A (public) or Part B (private). The Complainants had expressed a wish to move the item into Part A. They were happy for the information identifying them to be made public and published.

The Legal Services Manager's advice to the Panel was for them to consider whether it was in the public interest to disclose the information or keep it private. They needed to bear in mind that other individuals identified in the proceedings may not be happy for their identities and information to be published.

When deciding if it was in the public interest to disclose the Panel were asked to consider:

- Would the disclosure further the understanding and participation in public debate;
- Would the disclosure promote accountability and transparency
- Would it allow individuals to understand decisions made by Carlisle City Council and assist individuals to challenge decisions

Factors against disclosure may include:

- The impact of disclosure on those individuals, of their identity, email addresses
- That the Complainants had made allegations against individuals which may not be justified

The Panel considered the information and the legal advice and

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

AP3.5/17 COMPLAINT AGAINST DEVELOPMENT SERVICES (Public and Press excluded by virtue of paragraph 1)

Consideration was given to an appeal against Development Services.

The Chairman outlined the purpose of the hearing and the procedure that would be followed.

It was noted that all those present had seen the relevant documentation, copies of which had been circulated.

The Chairman asked the Complainants to summarise, as succinctly and clearly as possible, the reason for their appeal.

Before detailing the complaint the Complainants sought clarification with regards to the information they were able to share with the Local Government Ombudsman (LGO) should the Complainants choose to take the matter further. The Legal Services Manager advised that all information considered as part of the complaint could be shared with the LGO. The LGO had advised the City Council that the investigation period and relevant information for all complaints received had to remain confidential and could not be published or shared until they advised otherwise.

The Complainant expressed his disappointment that the report, which had been prepared for the Panel, had not contained details of the issues he had raised; he also felt that the size and layout of the document pack meant it would be difficult for Members to read. The Panel assured the Complainants that they took their role very seriously and had read and understand the full document pack.

The Legal Services Manager assured the Complainants that the Panel would give proper and detailed consideration of the complaint.

Two Complainants had submitted the complaint. One Complainant led the submission to the Panel on behalf of both Complainants.

The Complainant began his summary of the complaint. He accepted that the Panel could not overturn a planning application and the complaint before the Panel was about the Council officers' behaviour. He felt that the Council should make their decisions openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggestions that any decisions had not been partial, biased or not well founded in any way.

The Complainants were disappointed with the behaviour and bias displayed by the Council from the top downwards through actions which had been demonstrated since September 2016. The Complainants felt that the City Council favoured developers over residents and council tax payers and gave an example of a brochure which sought to attract developers to the City, without an equivalent for residents.

In setting out the complaint the Complainant gave an overview of the background to the application and detailed each of the complaints that occurred during the process. The Complainant explained that he had to raise all areas of complaints to enable him to raise the complaints with the Local Government Ombudsman.

The Complainant informed the Panel that he had exercised his right to speak at the Development Control Committee and following the meeting had been presented with minutes which failed to correctly represent facts given in the presentation despite a copy of the presentation being left with officers. The matter had been raised with the Council and the Complainants had been informed that Members were satisfied that the minutes were correct and that the Complainants had no right to correct them.

On this point the Legal Services Manager clarified that the minutes had been amended with the relevant housing site allocation references from the Local Plan. In addition a copy of the Complainants Right to Speak presentation had been added to the public planning file.

The Complainant stated that the Council had informed the Complainants that Planning held no other documents except those on the public planning file which was open to public inspection. The planning file did not contain any notes, documents or emails between the Council and the applicant or applicant's agent. The file, with one exception, did not hold any records or notes of telephone conversations or meetings. There were minimal emails between the Council and the applicant and only one letter. The Complainant failed to see how planning officers, with heavy caseloads, were able to remember everything about the various cases without such records.

He explained that the planning application process had included 2 applications, 6 highways reports, a Tree Preservation Order and a road safety audit; it would not have been possible to deal with all of the issues in a few emails.

Throughout the complaint the Council repeatedly directed the Complainants to Cumbria County Council for responses, however, Cumbria County Council were a statutory consultee and the City Council was the decision maker. It was the responsibility of the City Council to take account of all material factors and expert views.

The Complainant commented on the size of the meeting pack and stated that he had been accused of sending too many emails. He informed the Panel that he had taken the decision to direct the emails to all the relevant officers. This meant that the discussions regarding records of meetings and phone calls had been viewed by senior officers and the matter had not been addressed. The Complainant had viewed the planning file in June and there had been very few additional documents since February and no notes of any discussions with the applicant.

The Complainant stated that he had not read the agenda document pack. He felt that the information contained within the report had not been explained and had not been complete.

The Complainant detailed the initial discussions which had taken place with the applicant prior to the application being submitted. The applicant had initially indicated that fewer houses would be built in the development compared to the application which had been submitted. In addition the applicant had been so confident that the application would be granted that they had advertised the development on their website. The advertisement had been taken down as a result of a complaint from the Complainant.

The Complainant highlighted issues with the SHLAA which he believed had occurred due to a City Council officer mistakenly believing the site was all owned by one owner as there were no records available about the site ownership. In response to a question the Complainant stated he had no evidence to support his belief.

The Panel Members confirmed that they had seen the plans of the site and two of the Members had visited the site.

The Complainant moved on to explain a Data Protection breach which he felt had occurred in the Customer Contact Centre, full details of which were set out in section 1.4 of his submission. In response to questions the Complainant stated that he could not remember the exact information he had been able to see but it had included personal details. He had reported the matter directly to the Corporate Director of Economic Development who agreed to report it to the Data Protection Officer. There were no records of any statements following an investigation or of any outcomes following the breach.

A further more serious breach of Data Protection had been carried out by Planning Services. The Complainant had hand delivered an envelope addressed 'Private and confidential to be opened by addressee only' to the Civic Centre. Later on that day the Complainant discovered that the letter enclosed had been uploaded to the Council's website. The Complainant had demanded to see the Corporate Director of Economic Development and eventually spoke to her on the telephone. He felt her attitude was wrong, that she had a poor excuse for the breach and she failed to appreciate the seriousness of the incident. The Complainant had received a letter of apology two weeks after the incident. The letter had been taken down from the website.

The Complainant reported that the applicants had not consulted with residents and encounters with the applicants had left residents feeling threatened and verbally abused. The Complainant felt that the application was full of mistakes and the level of detail was not sufficient for the planning authority.

The Complainant felt that Planning Services had not challenged the highways reports sufficiently and did not request a bat survey in a timely manner; it took four months for the survey to take place. During the application process the City Council adopted a new Local Plan and residents had not been informed about the new Plan. There was therefore confusion among residents over which Local Plan should be used and the City Council website showed the old Plan and previous constraints for several months. Planning Services had stated that the delay in changing the Plan had been the result of issues with the software supplier.

Planning Services had commissioned a consultant to undertake an independent review of the highways proposals. When the Complainants asked to meet with the consultant they were informed that it was not policy for the objectors to meet with the consultant yet the Planning Officer would be able to attend the site visit with the consultant. The Complainant believed that

the Planning Officer would be biased toward the developer. By chance the Complainant met the consultant and Planning Officer on their site visit and the consultant had requested to meet with the Complainant. The Complainant met with the consultant and expressed the residents' concerns. The consultant's report had been issued but was not referred to again, other than in passing, and it had not been confirmed if it was accepted or not. The Complainant had met with the Planning Officer and had been informed that an independent report would have precedence over the County Highways report. This turned out not to be the case.

During the second planning application the Complainants decided to obtain their own highways opinion. Prior to instructing the same consultant that the City Council had previously used the Complainant had spoken to the Planning Officer to seek the Council's view. The Planning Officer had not objected to the Complainants instructing the consultant but did comment that it would save the Council money.

The Complainant further believed that the applicant failed to comply with the Town and Country Planning (Development Management) Procedure (England) Order 2015. The Complainant explained to the Panel the requirement for a Design and Access Statement and stated that the Complainants believed that the access component was substantially deficient. The statement should contain 4 requirements about access and the application failed on all 4. The Complainants had raised the matter with the Council and were repeatedly informed that the Design and Access Statement was acceptable. The Complainant gave an example of an issue whereby the applicant had stated that they had met with a named officer at Cumbria County Council regarding access, however, a Freedom of Information response from the County Council had shown that the named officer had not met with the applicant and this information had not been challenged by the City Council.

With regard to the TPO the Complainant stated that the new Local Plan referred to the protection of trees within developments. The second planning application which had been submitted recommended that four trees be removed and the Council accepted this in the application. It was left to residents to then request the TPO. The TPO had been requested on three separate occasions by the Complainants and was only made and later approved when the local Ward Councillor became involved.

A Swept Path Analysis had been undertaken by the applicant and it had been accepted by the Council that refuse vehicles would have to go over residents drive ways and demolish a fence to enter and exit the site. There was a second version of the Analysis but it had been confusing and difficult to understand and had not shown parked cars. As a result the Complainants commissioned their own Analysis but it had been ignored by the Council. The Complainants asked for information on the size of the contractor vehicles which had been used for the Analysis and had not received an answer. In the Development Control Committee Members had asked the same question three times and had not been given a response.

In addition the applicant had commissioned a road safety audit which had been recommended by the independent consultant. The audit identified a number of issues and recommended further investigation. Only two of the recommendations were accepted by the applicant and the County Council accepted this without further enquiry. Again the City Council did not challenge the County Council.

The Complainants had requested an editable format of the Swept Path Analysis and the agent had refused. The Council accepted this response which meant the Complainants could not carry out the work they wanted to to provide an objection. The Complainants had converted the document themselves and questioned why the applicant had not wanted to convert it and why

the Planning Officer had not challenged their response. They believed this showed bias to the developer.

Regarding the application there had been 82 letters of objections from 52 households which was a high number for a small development. The Complainant felt that residents' concerns had been disregarded and commented that he would not object again to the Council. He had only raised this complaint so he could raise it with the LGO.

Following enquires with the HMLR post decision, the Complainant had discovered that the development had been raised under two titles and he felt that the application should have incorporated both pieces of land. The matter was raised with the Council and a copy of the response had been included in the Agenda Document Pack. The Complainant said that the letter was incoherent and he had not understood the response.

The Complainant reported that objections in three emails were sent with plans to the Council but had gone missing and had to be resubmitted. The Complainant felt that the lack of record keeping was a serious failing and, although he was not making an allegation, he wondered if he submitted a Freedom of Information request if there were other email accounts or records available.

A Member asked the Complainant why he thought there would be other email accounts or records and the Complainant stated that he was not suggesting that the Planning Officer had done anything wrong but, in his working life, he had seen group email boxes. He felt it was strange that an officer did not keep notes of discussions.

The Complainant drew the Panel's attention to a set of minutes within his submission which were from a meeting with Development Manager in which the Complainants had listed their issues and concerns. There had been no acknowledgment from the Development Manager. The Complainant added that they had minuted the meetings and conversations and reiterated the importance of keeping records. In addition the Complainant reminded the Panel of the Lord Chancellor's Code of Practice on the Management of Records which detailed the importance of records management and associated risks.

The Complainant stated that there had been a number of issues with the second application. Section 5 of the application asked if assistance or prior advice had been sought from the local authority about the planning application, to which the applicant had answered yes. However, the Planning Officer had stated in an email that the 'applicant submitted both applications without discussing it before hand with the Carlisle City Council'. In addition the validation template, which was used by officers to validate an application, had not been completed with regard to the submission of the Design and Access Statement. The Complainant added that he felt that the Council had not shown due diligence when they failed to cross reference the template. The Complainants felt that the Design and Access Statement had been inadequate and when they challenged the Council on the matter they were told that the statement was acceptable without any justification or rationale.

The Complainant reported that he had not been happy with the planning application and asked where the Complainants could go with their complaint. The Legal Services Manager reminded the meeting that the Appeals Panel could not overturn a planning application. If the Complainant wanted to challenge a planning decision then they would be required to go to Judicial Review. She added that the Council could only operate within the system that was in place and within the boundaries of statute. The Complainant confirmed that he understood this.

The Complainants had made an allegation of bias against the Planning Officer and felt that their documentation proved the bias; they felt that applications would be approved regardless of objections so that the housing target would be met.

The Complainant repeated the accusation made by the Council that he had sent too many emails and drew Members attention to the letter received from the Town Clerk and Chief Executive (exhibit 8 in the Complainants submission) which referred to the Complainants complaint that correspondence had not been responded to. The Complainant stated that of 190 emails he had sent, 143 were of substance and he had only received 75 responses. Taking into account the nature of the application, compounded by the applicant's standards, the Complainant felt this was not an excessive amount of correspondence. The Complainants felt it was irrelevant how many cases an officer had to deal with. They expected responses to emails, if the officer did not have the resources needed then his managers should have provided additional resources.

The Complainant then highlighted an email within his submission which he had received from the Corporate Director of Economic Development. He questioned which emails the Corporate Director was referring to and why senior officers were forwarding emails to each other. He questioned whether 12 emails in 3 days merited the response he had received from the Corporate Director.

The Complainant then summarised the complaint, as detailed in the submission:

1. The Council failed to comply with the Town and Country Planning (Development Management Procedure) (England) Order 2015.
2. The Council failed to comply with Data Protection Law specifically failing to properly investigate breaches or review systems and controls to minimise future breaches.
3. The Council was guilty of persistent delays.
4. The Council failed to challenge the applicant on the poor standards of the planning applications.
5. The Council through its officers failed to maintain adequate records of correspondence, meetings and phone calls.
6. The Council failed to challenge Cumbria County Council on the poor standards of its reports.
7. The Council ignored reports which criticised the proposals or recommended further investigation.
8. The Council showed bias in favour of the applicant.
9. The Council's Officers had no sense of ownership and were unwilling to accept any form of criticism or learn from their mistakes.
10. The Council is overall guilty of other acts of maladministration.
11. The Council ignored 82 objections from residents.

The Chairman asked what outcome the Complainants would like from the Panel.

The Complainants suggested compensation of £2,000 for the time and effort of the work they had undertaken. In addition one Complainant felt it was more important that the outcome of the

Panel would be to make sure that managers had control of their systems, practices and procedures for the future so that other objectors did not go through the same issues.

The Chairman thanked the Complainants for their detailed submission and confirmed that they had presented everything to the Panel that they so wished. He informed the Complainants that the Panel would move to Stage 4 of the procedure and investigate the complaints made. He agreed to email the Complainants to inform them of the start date for the 20 working days in which the Panel had to submit their decision to the Complainants.

The Complainants and their Legal Representative left the meeting at 12.45pm

The Panel adjourned for a brief interval at 12.45pm and reconvened at 1.00pm.

The Planning Officer was invited to attend the meeting.

The Chairman summarised the Complainants complaint and invited the Officer to respond to the issues raised beginning with the allegation of bias.

The Planning Officer (PO) responded that he had dealt with a lot of applicants, agents and objectors and assured Members that he dealt with them all the same. The application site was designated as a housing allocation and there was therefore a presumption in favour of development

He clarified the situation of the site. The site in question had been allocated in the Local Plan for housing provision as part of a larger site. A further site which was adjacent to the site in question had also been allocated for housing. The application site and the rest of the sites were owned by different people and therefore the application site would be developed in its own right. The only access to the application site was via Lansdowne Close and there was no linkage from this site to the adjacent allocated sites.

In response to a question the PO explained that he had taken over as case officer for the development when the previous case officer became aware of a conflict. The previous case officer received an objection from a resident and at that point he realised that the objector was known to him and so stepped back and the PO took over as case officer.

With regards to the Bats survey the PO explained that it was up to the applicant to carry out a Bats survey, he had requested the survey and it had taken time for the applicant to carry it out.

The PO confirmed he did challenge the Highways Authority, he met with Highways officers and he commissioned an independent highway review of the application. There were a lot of issues from residents and numerous Swept Path Analysis were undertaken as a result, however the Complainants were not happy with them. The PO had discussed the issues with Waste Services and the final Swept Path Analysis had been based on the specifications of the newest waste collection vehicles. When asked about the Road Safety Audit the PO explained that all relevant information was given to Members to assist them in making their judgement.

Members asked the PO why he had not kept notes or records from meetings and telephone conversations with the applicant and agent. The PO explained that he had not spoken to the agent very often. The agent had been very experienced and as a result there had been little in the way of conversations other than to ask for updated information. The PO had not made a note of those conversations as he felt it was not necessary. When the applicant withdrew the first application there had been no discussion with Planning Services and there had been no discussion prior to submission of the second application.

A Member informed the PO that the Complainants felt that large developers had their applications 'rubber stamped'. The PO disagreed with this comment. He highlighted the TPO, the independent highways report and the meetings on site which showed that the application had not been 'rubber stamped'. He added that in response to the number of concerns raised by objectors, a number of pieces of work including multiple Swept Path Analysis had been commissioned, which went beyond the requirements of the application process, however, the PO considered them important as they addressed objector's concerns

The PO was asked about the meeting that the applicant said took place with a Highways Officer. He explained that the applicant had stated in the Design and Access Statement that they had met with a named Highways Officer. The named officer was not in post at that time but Highways thought a meeting had taken place with another officer who had left the authority. Planning Officers accepted the information given in the Statements they did not interrogate the information given to find out if meetings had taken place.

A Member suggested that it would be due diligence to make sure the information was accurate. The Legal Services Manager reminded the Panel that Cumbria County Council were a statutory consultee with specific expertise and the City Council had to accept that to a certain degree.

The PO understood that the Complainants did not believe that the Design and Access Statement met the 4 requirements of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The PO disagreed and accepted the Statement; however, due to the concerns raised he asked Legal Services and his Manager to give an opinion. Both agreed that although the Statement was brief it fulfilled the statutory requirements and reflected the size of the development. With regard to the section of the Design and Access Statement that said the developer met with the Highways Authority this did not affect the application. The applicant could say no meetings had taken place and this would not affect the application.

With regard to the site being allocated for housing, the PO informed the Panel that the site would be developed as housing unless there were material considerations to refuse the application. There were 82 objections to the application which was a considerable number for a development of this size. All of the objections, including the Complainants, had been summarised and included in the report which was considered by the Development Control Committee or reported verbally to the Committee.

The PO was asked if it was normal procedure to record meetings and phone calls and he explained that he would make a note of meetings. He did not make a note of telephone conversations for minor requests. In this case he felt bombarded with emails from the Complainants which affected his work; he did not make a note of phone calls as they were for minor requests such as requesting a copy of a plan. The planning files were paper based and emails were printed and filed in them. With regard to the three hour meeting which the PO had with the Complainants he explained that he had not made notes as the meeting involved the Complainants reading out their lengthy objection and giving him a copy. He agreed he should have made a note of any required actions.

The amount of emails received made it very difficult for the PO to respond and eventually, due to the volume, he had to respond to emails in batches. There was no Council wide time limit for responding to emails, however, planning officers respond to planning enquiries within 10 working days. He explained that he had not told the Complainants that he would respond in batches, however, the Corporate Director had informed them.

The PO commented that this had been one of the most difficult cases he had dealt with and the volume of emails had affected his workload and had resulted in him working from home and at weekends. He added that the Corporate Director had tried to manage the influx of emails to support the PO.

The PO explained that there were three planning files for the development, the first covered the first application, the second file covered the second application and a third contained the Complainants emails. The three files contained all correspondence and documents relevant to the planning applications. The Complainants had submitted a spreadsheet to the PO detailing all of the emails and correspondence that they had sent and where responses were still outstanding. The PO had updated the spreadsheet highlighting when all the responses had been sent and sent it back to the Complainants. The spreadsheet had been included in the Agenda Document Pack. The Complainants had received responses to everything, they did not, however, always agree with the response and on those occasions kept asking for responses.

The PO detailed the procedure for emails and correspondence coming into Planning Services for publication on the website. As a result of a recent case Planning Services had changed their procedure and documents were now approved by a Planning Officer prior to them being uploaded within 48 hours.

In response to a question the PO explained that Planning Services had a good relationship with the Highways Authority. Planning Officers usually met with the Highways Officer once a week to discuss applications and raise issues.

AP3.5/17 STANDING ORDERS

It was noted that the meeting had been in progress for 3 hours and it was moved, seconded and RESOLVED that Council Procedure Rule 9, in relation to the duration of meetings be suspended in order that the meeting could continue over the time limit of 3 hours.

AP3.6/17 COMPLAINT AGAINST DEVELOPMENT SERVICES

A Member raised the allegations that the Complainant had regarding threats by the applicant and asked why the PO had not recorded the incident when the Complainant reported it. She felt that the PO should have been clear with the Complainant that it was not a matter for the City Council and that he should contact the Police.

A Member commented that the Complainant had felt that the Council had failed to comply with the Town and Country Planning (Development Management Procedure) (England) Order 2015. The PO clarified that the Council had not failed to comply. The Design and Access Statement had been accepted and the access to the site was 4.8metres which complied with the County Council guidance and meant it was suitable as an access road for up to 50 dwellings with shared surface and did not require a path.

The Member further commented that the Complainant had raised issues regarding ownership of the access and the strip of land that had not been included in the application. The PO explained that the strip of land was currently highway use and would not require a change of use. Any issues regarding the small strip of land and access to the site would be a matter for the land owners to deal with.

With regard to the complaint about the open space contribution required from the applicant, whereby, the Complainant had stated that the calculations for the Section 106 monies had been incorrect and should have been a higher figure, the PO explained that the initial calculations had been based on 17 x 3 bed properties; however, the calculation had been recalculated using the correct mix of 3 and 4 bed properties (excluding the two MENCAP properties) and this resulted in a reduced figure for the open space contribution to the Council. The PO did not carry out the Public Open Space calculation, this had been carried out by the relevant department.

The Panel thanked the Planning Officer for his input and he left the hearing at 2.00pm.

The Corporate Director of Economic Development was invited to the meeting.

The Chairman welcomed the Corporate Director and summarised the complaint and invited her to respond.

The Corporate Director explained that Government Policy for housing development meant it was difficult to refuse planning housing allocation applications which were in accordance with the development plan unless there were clear material considerations. She commented that planning applications were often the only time residents interacted with the Council and understood that they would be stressed and upset about matters but felt that the Planning Officers went over and above their usual processes in dealing with the objectors for this case. The role of the Planning Officer was to gather all of the relevant information and objections together, analysis this and reach a recommendation before presenting the information in a report to Members for their consideration. She felt that officers in this case had exceeded their requirements given the size of the development.

She explained that she would not see the Design and Access Statement or details of the planning application as she was not involved in the day to day work of the Planning Officers; she dealt with more strategic matters in her role as Corporate Director.

A Member pointed out that the Complainant had stated that he felt that there was a culture of fear in the Council of larger developers and that the Council did not want to get into the Judicial Review process with companies that had more money than the Council. The Corporate Director assured Members that the Development Control Committee were not fearful to refuse applications from large developers. The Committee considered each application on its own merits regardless of who the developer was. Members received all of the information and advice and always looked for a quality decision. She commented that she had seen bullying from both objectors and developers which could be counterproductive and as a result officers always tried to be fair, impartial and transparent.

The Corporate Director informed the Panel that this case had caused the section to reflect on its procedures and look at how other authorities dealt with objectors. Many other authorities did not enter into dialogue with objectors unless information was required and made this clear on their websites and correspondence. Planning Services were very reluctant to do this but the Corporate Director had a duty of care to officers and had to consider the impact cases such as this one had on officers. The Complainant had raised the email the Corporate Director had sent informing him that should he continue to send the amount of correspondence that he had, it would be appropriate to invoke the Unreasonable and Unreasonably Persistent Complaints Policy. The Corporate Director explained that she had sought legal advice prior to sending the email and felt it had been necessary as the application had been dealt with and the Complainant had proceeded to send multiple emails to officers within the Council in a short space of time. If the matter had not been part of a planning application the correspondence from the Complainant would have triggered the Policy sooner.

With regard to Data Protection Breaches the Corporate Director explained that she received a lot of mail each day which was directly addressed to her. The letter had been opened and uploaded in error and this had happened quickly in response to a complaint from the Complainant that a previous letter had not been uploaded quickly enough. The process for the website had now changed and it now took 48 hours for documents to be uploaded and agreed by planning officers. She believed that the incident had been reported to the Data Protection Officer verbally at the time and a letter of apology was sent out to the Complainant.

The Corporate Director explained that each Planning Officer had their own way of recording telephone calls and meetings and they would be expected to record conversations that required an outcome or particularly difficult conversations. The new planning computer software that was being installed would allow officers to make notes and attach them to the files. She explained that Planning Services was a very busy and intense environment and it was not possible for Planning Officers to record every single phone call as often they had calls lined up. She did expect important telephone conversations to be followed up by an email which confirmed the conversation.

A Member pointed out that the Complainant had stated that the Council had been guilty of persistent delays. The Corporate Director had not seen any delays from Planning Officers. In response to a question the Corporate Director stated that Planning Officers had no authority with developers to make them respond quicker or produce documents. Planning Officers could ask for information and give reasons for a timely response but they had no jurisdiction to put timescales in place. Planning applications that did not have all of the information the Council required could be refused but it would depend on the issues or missing information.

The Corporate Director felt that the Planning Officer had challenged the County Council and the developer in response to objections raised. He was given support to deal with the application through his line manager and had administrative support. When a large application was submitted the case officer was supported by work being moved away from him and no new cases being allocated to him, this did not happen with this case due the small size of the development.

The Corporate Director commented that she would not expect officers to request an open space survey for all applications; each application had to be considered individually. She added that it was not unusual for residents to request TPOs as they understood the area better.

The City Council had carried out the statutory consultation process and the Council advised developers that best practice was for them to consult with residents but there was no requirement for them to do so.

The Corporate Director summed up by explaining that she had personally worked very hard with the Complainant to try and make the process easier, she had assigned an officer to deal with all of the issues but the Complainants would not contact the officer. Every effort had been made to help the Complainants but she, ultimately, had duty of care for her officers and it had reached a point that she had to step in. Planning applications were difficult and officers were often in difficult situations as either the applicant or the objectors were not happy. She stated that residents should be able to engage with the Council but they had to understand that they could not monopolise an officer's time.

The Panel thanked the Corporate Director of Economic Development for her input and she left the hearing at 2.50pm.

The Development Manager was invited to the meeting.

The Chairman welcomed the Development Manager and summarised the complaint asking the Development Manager to respond to the allegations of bias in favour of the developer first.

The Development Manager assured the Panel that all applications were treated equally and fairly. This developer had had applications refused as well as approved by the Council. He felt that the perception of bias may have come from the inclusion of the site as housing allocation within the Local Plan, which meant that the principle of development had already been established, however, the Local Plan was an open process in which the public could engage.

With regards to land ownership the Development Manager clarified that the sites had separate owners and therefore would not be developed as one site. He explained the process for identifying sites for the Local Plan and informed the Panel that the two owners had responded to a public call for sites in 2008 and then again when the Local Plan was reviewed. The access to the site was only for the site in question not for the whole of the land.

There had been extensive press coverage of the new Local Plan and it had been published in the Carlisle Focus which was distributed to 40,000 houses. The method of advertisement of the Local Plan had been accepted by the Planning Inspector. During the planning application process the Planning Officer had met with the Complainant to explain the Local Plan but the Complainant would not accept the information. Unfortunately there had been an issue with the software which had caused a delay in uploading the new Local Plan constraints into the planning portal. The issue had taken a number of weeks to be fixed by the suppliers.

The Development Manager explained that normal practice dictated that the independent highways consultant would not discuss applications with the applicant, agent or objectors so that they would remain impartial. This case had been the first time the Council had used this particular consultant and it was highly irregular for them to discuss the application with the objectors. It was also unusual for the consultant to then go on to work for the objectors on the same application.

The Development Manager was asked if the application could have been handled differently and he responded that if officers had more time and only had to deal with one case then it perhaps would have been different. However, the objections to the application had been unexpected and unreasonable. The spreadsheet that the Complainants supplied stated that a number of matters had not been responded to but they had, the Complainants would not accept the responses and so continued to ask for more. The Complainants continued to issue emails to everyone even when they were asked to go to one point of contact, the case officer. In all applications the case officer needed to understand the whole application and all the issues and was the point of contact.

He considered the application as a whole and felt that the responses to the Complainant in batches could have happened sooner. He explained that it was not unusual for a planning file to have no additions to it over a period of time. The planning files were not updated to say nothing had progressed. It often took time for applicants to carry out requests such as Bat surveys and therefore nothing would be entered onto the file. When an officer requested information from an applicant they could suggest a timescale but the applicant did not have to comply.

Issues with response times from the Highways Authority had been addressed and had improved. There was no service agreement between the two authorities however Central

Government had recognised that some statutory consultees had taken too long to respond and work was being undertaken to address the issue.

Resources within planning services were limited and there had been difficulties in recruiting to planning services nationally, the City Council used graduate placements and tried to encourage graduates to seek work within the authority when the opportunity arose. During the process for this case the Development Manager had supported the Planning Officer and had stopped new cases being assigned to him and tried to alleviate work pressures. The whole case had had a negative impact on the PO and his workload.

The Complainants had accused the Council of persistent delays and the Development Manager explained that the Complainant demanded responses immediately from officers and this was not always possible due to other work commitments. The Complainants had sent several emails in short spaces of time and despite attempts to explain that it was not reasonable to expect immediate responses the Complainants continued to demand responses. The Council did not have a timescale for email responses so the section tried to keep to the same response as letters which was 10 days. He agreed that the response time could be clearer in acknowledgement emails. The new planning software allowed users to receive alerts for planning applications so they would know immediately when new information was uploaded and would no longer have to wait for Planning Services to contact them.

At the end of the planning application process the Complainant continued to email officers and a decision had to be taken as how they would be dealt with, this resulted in the Corporate Director advising the Complainant with regard to the Unreasonable and Unreasonably Persistent Complaints Policy.

The Development Manager confirmed that he was happy that the Design and Access Statement met the statutory requirements. He agreed that it was brief and could have been better quality but it did meet all of the requirements. Ultimately, this had been a decision for the Council as local Planning Authority.

The Development Manager had instructed all Planning Officers to make better notes especially of difficult conversations to protect both sides and to ensure everyone understood what had happened, he agreed that this case should have triggered better notes.

The Panel thanked the Development Manager for his input and he left the hearing at 3.35pm.

The Town Clerk and Chief Executive was invited to the meeting.

The Chairman welcomed the Town Clerk and Chief Executive and summarised the complaint and asked the Chief Executive to respond to the issues raised by the Complainant regarding the comments in his letter about failure to reply to correspondence.

The Town Clerk and Chief Executive explained that the amount of correspondence received from the Complainants had been excessive and this had made it challenging for officers to keep on top of the responses with the resources that they had. With regard to responses to Corporate Complaints, there was a policy in place and it was implemented by the Customer Services Team, the time standards for responses were usually met but on occasion the authority did fall short. The Council did have an Unreasonable and Unreasonably Persistent Complaints Policy in place; however, the Council were very reluctant to use the Policy and preferred to engage with residents.

In response to a question the Chief Executive stated that officers reflected on experiences such as this one and learned from them for the future. He believed officers dealt with the case the best way they could and the complaint would have progressed regardless of any changes.

The Chief Executive confirmed that had been made aware of the Data Protection Breach and the circumstances which lead to the document being uploaded. It was a mistake and the Corporate Director had apologised, in writing, for the incident. He was content that the new procedures which had been put in place would prevent a similar incident happening again.

The Panel thanked the Town Clerk and Chief Executive for his input and he left the meeting at 3.55pm.

The Panel wanted to investigate the alleged Data Protection breaches further and adjourned the meeting until 2.00pm on Wednesday 22 November 2017.

The Democratic Services Officer agreed to email the Complainants to inform them of the adjournment.

(The Panel adjourned at 4.00pm)

APPEALS PANEL 3 – RECONVENED MEETING WEDNESDAY 22 NOVEMBER 2017 AT 2.00PM

PRESENT: Councillors Mrs Birks, Collier and Harid

OFFICERS: Legal Services Manager
Corporate Director of Governance and Regulatory Services
Customer Services Receptionist

AP3.7/17 COMPLAINT AGAINST DEVELOPMENT SERVICES

The Panel gave consideration to the aspects to be investigated and which officers should be called to the Panel.

The Corporate Director of Governance and Regulatory Services was invited to the meeting.

The Chairman welcomed the Corporate Director and summarised the complaint and asked him to respond to the issues raised by the Complainants with regard to the Data Protection breaches.

The Corporate Director responded that he had been aware of both of the alleged Data Protection breaches through some support work he had undertaken for the Customer Services Manager and as part of which he had advised. He was aware that processes had been put in place to ensure there would be no further breaches with regard to the website.

He confirmed that there was a Corporate Complaints Policy which had set timescales for responses. There was not a Council wide policy which set out timescales for responses; however, his section had a service level agreement which stated that an acknowledgement would be sent out within 5 working days and a full response in 10 working days. He commented that it would be difficult for officers to put time lines on cases such as this one due to the volume of correspondence received.

The Panel thanked the Corporate Director for his input and he left the hearing at 2.25pm.

The Customer Services Receptionist was invited to the meeting.

The Chairman welcomed the Receptionist and summarised the complaint. He asked her to provide details of the visit to the Civic Centre reception in which the Complainant stated that an alleged Data Protection breach had occurred.

The Receptionist was very clear in her recollection that the Complainant had visited the Civic Centre to view plans. There was no Planning Officer available so she suggested the Complainant view the plans on her screen. He agreed and pulled a chair to the side of her desk, she turned the screen around so he could see it but she did not give him any access to her keyboard or to the mouse. The only personal data the Complainant could have seen, if there was any, was any emails which arrived and popped up briefly on arrival. In this case, the name of sender and title of the email would be visible.

The Receptionist could remember the incident clearly after such a period of time due to the manner of the Complainant and his demands to see the Corporate Director of Economic Development. She confirmed that both of the Receptionists had received Data Protection training.

The Panel thanked the Customer Services Receptionist for her input and she left the hearing at 2.35pm.

The Panel then considered all of the evidence presented to them prior to and during the hearing and:

RESOLVED –

1. The Council failed to comply with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

The Appeals Panel did not uphold this complaint. The Panel agreed that the Design and Access Statement for the planning application was brief, however, the Panel were informed that the Statement had been checked by the Planning Officer and the Development Manager when it was submitted. It is a matter for the Local Planning Authority to satisfy itself as to the adequacy of the Statement and, in this case, notwithstanding the brevity of the document, it was satisfied that the Statement met the criteria and therefore did comply with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

2. The Council failed to comply with Data Protection Law specifically failing to properly investigate breaches or review systems and controls to minimise future breaches.

The Appeals Panel upheld this complaint. There are two elements to this complaint. Firstly, the Complainant stated that he had been allowed access to a member of staff's computer in the reception area and were able to see personal data. The Appeals Panel upheld this complaint in part. Secondly, a private and confidential letter the Complainant wrote to Planning Services was uploaded to the Council's website. The Panel upheld this complaint. In making these findings, the Panel listened to the evidence provided to it and agreed that the alleged breaches had not been properly reported to the relevant officer. The Panel was also satisfied that, while viewing the computer monitor in reception, the Complainant may have been able to see personal data, albeit not of a sensitive nature. The Panel did not accept that the Complainant was able to control the computer so as to access systems, as it accepted the evidence that the receptionist had control of the mouse and keyboard. The Panel was satisfied that procedures

were now in place to prevent further breaches of a similar nature in Planning Services and that relevant officers had received Data Protection training. Further procedures will be implemented and appropriate training is to be provided in advance of the General Data Protection Regulation which comes into force in May 2018. The Panel has also made recommendations as to how planning files may be viewed in future, in order to prevent any further similar occurrences in Customer Services reception.

3. The Council was guilty of persistent delays.

The Appeals Panel did not uphold this complaint. The Panel saw no evidence that supported this allegation. There had been delays in the applicant carrying out work which the Planning Officer had requested; however, Planning Services did not have the jurisdiction to put timescales on applicants and agents. While there have been delays in obtaining some statutory consultee responses, this issue has been raised with the consultees and turnaround times have now improved.

4. The Council failed to challenge the applicant on the poor standards of the planning applications.

The Appeals Panel did not uphold this complaint. The Panel saw no evidence to support this allegation. Where additional information was required in order to determine the application, this was sought.

5. The Council through its officers failed to maintain adequate records of correspondence, meetings and phone calls.

The Appeals Panel did uphold this complaint. The Panel agreed that Planning Services should maintain better records with regard to meetings and telephone discussions and have recommended that Planning Services bring in a new procedure which ensures this is done.

6. The Council failed to challenge Cumbria County Council on the poor standards of its reports.

The Appeals Panel did not uphold this complaint. Cumbria County Council is a separate entity and Planning Services have limited influence on the content or quality of consultation responses, however, the Planning Officer requested several reports and brought in independent consultants which challenged the information supplied from statutory consultees. Changes have also been made to the working relationship which has improved communication.

7. The Council ignored reports which criticised the proposals or recommended further investigation.

The Appeals Panel did not uphold this complaint. All of the information was considered by the Planning Officer who summarised this for Members, including providing detailed summaries of neighbourhood objections. This was provided in a report to the Development Control Committee, who also had access to every piece of information. In considering the application, Members took account of all of the evidence provided and listened to objectors at the meeting prior to making their decision.

8. The Council showed bias in favour of the applicant.

The Appeals Panel did not uphold this complaint. The Panel saw no evidence which supported this allegation. The Council has previously refused applications from the developer. National Planning Guidance states that planning applications which are in line with the Development

Plan should be approved unless material considerations indicate otherwise. The application site had already been allocated as housing land in the Local plan therefore the principle of development had been established. There were no material considerations which would be contrary to this

9. The Council's Officers had no sense of ownership and were unwilling to accept any form of criticism or learn from their mistakes.

The Appeals Panel did not uphold this complaint. It was satisfied that Planning Services had listened to that criticism which was justified and had learned from the mistakes which had been made in this case. This was evidenced by the changed procedures within the Authority.

10. The Council is overall guilty of other acts of maladministration.

The Appeals Panel did not uphold this complaint. Unless otherwise itemised in the complaint, and therefore addressed elsewhere in resolution, no information was provided regarding what these acts of maladministration were nor was any evidence provided to support this allegation

11. The Council ignored 82 objections from residents.

The Appeals Panel did not uphold this complaint. A detailed summary of all 82 objections was included in the Committee Report, and residents participated in the Right to Speak Scheme. This clearly demonstrated that the Development Control Committee determined the application with all of the information and objections in front of them and, while the decision which was ultimately made may not have been the desired outcome from the point of view of the residents, it cannot be said that their objections were ignored.

In addition to the above items which were specifically raised in your written complaint, the Panel considered the following issues which you raised in your oral submission:

In addition to above the Panel considered the following issues which the Complainants had raised in their complaint submission:

(i) Additional documents

The Complainant stated that they were bound by the City Council rule that they could not present any additional documents at the meeting. This statement was also made in the Complainants written submission.

The procedure for all Appeals Panels meetings is that the draft report and documentation is issued to the Complainant ten days before the final pack is issued, and the Complainant has the opportunity at that point to add any documentation that they wish the Appeals Panel to see as part of their consideration of the complaint. This procedure was also followed in this case. The Complainant submitted a sixty page document with appendices attached and had not requested to submit any further information.

(ii) Minutes

The Complainant stated that the minutes from the Development Control Committee failed to correctly represent facts given in their presentation.

Following correspondence with the Complainant the minutes of the Development Control Committee meeting had been amended with the relevant housing site allocation references from the Local Plan. In addition a copy of the Complainants Right to Speak presentation had

been added to the public planning file. The Council did not produce verbatim minutes of its meetings and it was unusual to enter negotiations with members of the public on the contents of its minutes.

(iii) Agenda Document Pack and Ombudsman

On several occasions the Complainant stated that they had not read the Agenda Document Pack and that, regardless of the decision, they would be taking the complaint to the LGO.

The Complainant was assured that each Member of the Appeals Panel and the Legal Services Manager had read the Document Pack and prepared themselves for the meeting. The Document Pack contained all of the information that the Appeals Panel received to consider the complaint as a whole. Panel Members gave careful and proper consideration to the complaint and investigated each of the allegations thoroughly.

(iv) No responses to correspondence

The Complainant had submitted a spreadsheet detailing the correspondence that had been sent to the Council and it highlighted correspondence that, the Complainant said, had not been answered. The Panel questioned officers on this, and examined the Document Pack, and were confident that officers had responded to all of the correspondence albeit that emails may have been 'batched' to make this more manageable. It noted that many emails were sent to multiple recipients and it would not expect each officer to respond to you in that case.

Recommendations:

The Panel has made the following recommendations:

1. That all officers within Planning Services are made aware of the new procedures for uploading documents on to the Council's website;
2. That members of the public are not permitted to use a staff computer screen in Customer Contact reception area. Instead, members of the public will be required to make an appointment with Planning Services to view the plans. It is anticipated that, following refurbishment of the Civic Centre ground floor self-service terminals will be provided to facilitate independent viewing of plans, as was the case before the flood damage which took place in December 2015;
3. That Planning Services introduce a standard procedure for its officers to make file notes recording activity on a matter. This is good practice and will enable (a) the planning officer to recall activity on a matter, (b) the public to assess what communication has taken place between the officer and other parties and (c) another member of staff to readily pick up the matter in the event of sickness, etc.
4. That consideration be given to introducing a Council wide formal response time to all correspondence, not merely complaints, this to be published on the Council's website. This would improve communication between the City Council, residents and businesses and will assist in managing expectations.

[The meeting ended at 3.05pm]