

APPEALS PANEL 2

MONDAY 26 MARCH 2018 AT 10:05AM

PRESENT: Councillors Bloxham (Chairman), McDonald and Bomford.

OFFICERS: Principal Lawyer
Principal Planning Officer
Service Improvement Manager

ALSO

PRESENT: Complainants

AP2.05/18 APOLOGIES FOR ABSENCE

There were no apologies for absence.

AP2.06/18 DECLARATIONS OF INTEREST

There were no declarations of interest in respect of the complaint.

AP2.07/18 PUBLIC AND PRESS

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.

AP2.08/18 COMPLAINT AGAINST APPEALS PROCESS

The Chairman introduced the Panel and confirmed that all those present had seen and read the relevant documentation, copies of which had been circulated.

The Complainants commented that Cllr Bloxham had been present at the original planning meeting. Cllr Bloxham confirmed that both he and Cllr McDonald had been present and that he had taken advice and could find no reason to require that they should be replaced as Panel members. The Complainants stated that, as this appeal was remote from and not directly connected to that event, they had no objection to them being on the Panel.

The Chairman reiterated that the Appeal was to be heard in private and asked if the Complainants were happy for the hearing to continue. The Complainants confirmed that on this occasion they were, though at the last Appeal they had not been of that opinion but had not been given the option to argue that case.

The Chairman outlined the process for the meeting, reiterating that all the Panel Members had read the Complainants' submission above once and invited the Complainants to summarise the reason for the complaint.

One of the Complainants stated he would summarise their complaint on behalf of both Complainants. He noted that, while the substance and issues pertaining to the complaint had been fully detailed in their submission to the Panel, due to their serious concerns about the consideration of a former complaint of theirs by an Appeals Panel, he would prefer to go through the entirety of their submission, which he presented as follows:

The Complainant stated they had been appalled by the standards applied by the Council in its consideration of their previous complaint. He hoped that the Panel would take the entirety of their submission as the complaint and give equal providence to all parts.

Papers had been received on 26 January 2018 and had been indexed in their pack. The supporting documents for the first Appeals Panel had not been indexed. The Council lacked detail in their outline of procedures and this confusion could have been avoided if the Complainants had been informed how the papers were to be indexed in advance. The information given to them was contained in a one-page document and suggested that a handbook would reduce the need for Complainants to ask questions and would also save time and money.

The Complainants asserted that the minutes of the previous Appeal had contained twelve factual errors.

The Complainant had submitted a Freedom of Information request to the Council asking for all planning applications submitted by a particular property developer from 2010 to 2017. The response received stated that they could look the information up on the Council's website. He said the information was on the website but it was very difficult to access.

The Principal Lawyer asked whether the Complainant was referring to the Planning Portal, which was a national system. The Complainant stated that it contained a notice advising that there could be delays in accessing information.

The Principal Lawyer pointed out that the Council received an average of around ten Freedom of Information requests per day and, were the information to already be in the public domain, it was appropriate to refer requestors to that information source.

The Complainant replied that the time it took to access the portal was excessive, even via a very fast connection. He advised that the Legal Services Manager had then supplied the information requested via the Freedom of Information request, following which the notice had been placed on the portal.

The Complainant had been disappointed at the last appeal where he had been assured that Panel members had read the full pack, comprising 1364 pages, and commented that, in his opinion, it was not possible that the Members could have read that volume of paperwork in the timescale allowed nor have had sufficient time to give due consideration to the issues raised therein.

The Complainant referred to pages 14 and 15, point 1.4 of the current document pack, stating that the document pack received in respect of their first Appeal had contained details of three planning files. The first file related to a previous planning application, with the second and third files relating to the subsequent planning application, all of which they had seen before. In his view, the pack was simply "a dump of emails", many of which had originated from the Complainants themselves, had contained no legally water-tight arguments and there had been no instruction given that the contents were to be kept confidential. The Complainant stated that it had taken them thirty six hours to go through it all, much of which had been done by only one of the Complainants; as the other Complainant worked away extensively, hard copy documentation was difficult to deal with.

The Complainant stated that they had only been given four working days to make their submission by 12:00 noon on 3 November 2017, which was not long given the amount of documentation and it would have been helpful if they had received the documentation sooner. Their criticism of the Council was that it had inbuilt procedures and a tick-box mentality; the

Complainant felt that in some circumstances the Council ought to provide Appeals Panel documentation earlier to give the Complainant more time to go through it. The Council had been advised on 15 September of the Complainant's intention to escalate their complaint to the Appeals and asked why the draft pack had not been despatched sooner.

The Complainant stated that the Panel should ask Officers: why the first pack was not deemed confidential but the second was, even though they contained the same documents and; why were the Complainants given only four days to consider the pack and make their submission. They had not been told at the time that their submission was to be at the back of a large pack.

The Complainant stated they had not been given details of how the pack was to be made up and had been working in the dark and that once their submission was in, that was it, even though they did not know what they were going to get from the Council. Their submission was at the end of the pack and contained different page numbering to that of their submitted documents, which had led to confusion in the meeting, especially for the Panel, and this was a dis-service to the Councillors.

The Chairman responded that their observations had been noted and the Complainants' submission for their current Appeal had been included as the first series of appendices to the report.

The Complainant then referred to pages 16 and 17 of their submission, which detailed the correspondence between themselves and the Council. He referred to Exhibit E on page 87 of the pack, and stated that had been the only real information they had received in relation to the Appeal process. Consequently, they had been required to repeatedly go back to the Council for further information; he suggested that information should be in booklet form and that more could be done through the website to make it easier for Complainants to understand the process.

With reference to page 17 of the pack, the Complainant considered that the email from the Customer Services Manager appeared to predict that their previous appeal would be heard in Part B (private). That communication had been sent quite some time before the previous hearing and he took exception to it appearing to pre-determine whether or not their complaint would be heard in private. He stated that it seemed the Public Interest Test had not been fulfilled and asked what the Council's position would have been had no personal data been included.

Referring to a letter from the Legal Services Manager on 8 December 2017, the Complainant quoted "Members receive a detailed explanation of the tests they had to apply". The Complainant stated that in the previous Appeal very little had been said about parts A and B, nor were details of the application of the public interest test discussed, therefore he believed there had been some mis-direction to the previous Panel.

The Complainant drew Members' attention to page 20 of the pack, and referred to the Public Interest Test; he further noted that the Local Government Act 1972 had been amended in 2006 but no reference was made to this in the Council minutes. The Complainant stated that he had raised this issue with the Council, but he had not received a reply. The Complainant also considered it to be grossly unfair that the Panel were able to agree the minutes of the meeting unilaterally.

The Chairman stated he was concerned that the Complainant had passed over a remark contained in the submission, i.e. "Is the panel ordered in advance what to do?". The Chairman assured the Complainants that the Panel determined Appeals without direction from Officers.

The Complainant stated that the Legal Services Manager letter of 8 December 2017 had also advised that “the documents in the planning file and on the website are redacted to remove personal details, whereas the documents provided to Members are not redacted”. The Complainant had visited the Council’s offices to look at files and had requested copies of a number of documents, none of which had been redacted. He provided the Panel with copies of some of those documents to view.

He stated that as the Legal Services Manager had referred to planning files, which the public were able to view and which by law the Council had to provide, the Chairman could not subsequently declare that detail was private when it had previously been publicly available.

The Principal Lawyer sought confirmation from the Complainant that copies of those emails had been given to the Complainant. In response the Complainant stated they had been given to him by a Council Officer. The Chairman asked the Principal Lawyer whether it was normal practice to redact planning documents. The Principal Lawyer said it was his understanding that, for any documents received and then made public, personal details should be redacted.

The Complainant indicated that there were also instances on the planning portal where the same level of information could be viewed. The Complainant stated that the reason the Council had provided for the previous appeal being heard in Part B was because it contained personal information. However, all the information given to Members must have come from the planning files, some of which had not been redacted, therefore anyone could have seen it prior to the appeal, and as a result, the Council could not rely on the information being confidential.

The Chairman said the Panel would take this point up with Officers; he further advised the Complainants that Members received unredacted information, but that shown to members of the public should be redacted.

The Complainant stated that the final document pack for their previous appeal had been received on 8 November 2017 and contained the same documents as the first pack. The first pack had not had a privacy warning attached to it, and as the Council had not stated those documents were confidential, the Complainant had therefore copied them and sent copies to others. He suggested the Council could not introduce this condition after the circulation of the first pack and that it must be done at the time the first documents were issued. He stated that he had been told by a Democratic Services Officer that his own submission was confidential and that they could not be distributed.

The Chairman stated that the Complainant could distribute their own submission but that the Council was not able to do so. The Complainant referred to page 20 of the document pack, quoting from an email received from the Council on 7 November 2017 which stated, “I must advise you therefore, not to share the report or any part of the document pack as you propose” and advised he had only seen this with the second and subsequent document packs.

The Complainant stated they did not have the opportunity of responding in writing if they did not agree with something in the report; that they were only able to raise those issues at the current hearing.

The Chairman sought clarification on this point to which the Principal Lawyer stated that the Council and its Members had a duty to make it plain if the proceedings were to be heard in private but had no power to prevent or sanction the Complainant from sharing their information.

The Principal Lawyer stated that when the first pack was dispatched it contained only supporting documents, principally correspondence with no report and as such was not at that point deemed to be confidential. The documents were circulated to the Complainants so they

were aware of what the Council intended to submit to the Panel and to give them the opportunity to submit any documentation they considered the Panel would need to determine their complaint. When the report was added the decision as to whether the report remained in private was made first by the Proper Officer and then by the Panel at the meeting.

The Complainant referred to page 20 of the document pack, stating that the Council referred to Schedule 12 of the Local Government Act 1972, which had been superseded by The Local Government (Access to Information) (Variation) Order 2006 ("the Order"). There was no reference to the latter Act, which contained different stipulations regarding the publication of personal information.

The Principal Lawyer distributed highlighted copies of relevant sections of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012/2089 to the Complainants and, referring to paragraph 3B therein, advised that the Council was governed by those regulations which made clear that in exempting information from publication, reference must be made to the 1972 Act and nothing beyond it.

The Complainant asked if the Council had an up-to-date subscription to the Westlaw service and the Principal lawyer confirmed that they had.

The Complainant, referring to page 24 of the document pack, quoted the Order as follows: "Information is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information." In respect of their previous Appeal, the Complainant asserted that the Council had not correctly applied the rules of the Public Interest Test.

The Principal Lawyer stated that the general Public Interest Test had been applied when arriving at the decision; he indicated that Members may wish to discuss the matter with the Legal Services Manager regarding this.

The Chairman stated that he considered the decision for the previous Appeal Panel document pack to be exempt from publication as correct.

The Complainant referred to pages 27 (point 1.5) and 61 of the document pack, together with Exhibit B (pages 41 to 44) stating that in his opinion there was a pre-determination that the Appeal would be held in private.

The Complainant stated that the Legal Services Manager had said if they had requested their submission be included in the pack earlier it would not have been at the back of the pack but in his opinion, when it was an appeal it should be at the front of the pack as a matter of course.

Referring to page 28, point 1.6 of the document pack which summarised the points of the complaint, the Complainant asked the Panel to consider each matter individually as well as the submission in its entirety.

The Chairman asked Panel members if they had any questions for the Complainants and each stated that the issues they wished to raise had been addressed during the Complainants' verbal submission.

The Chairman stated that he was interested in the suggestion that, as not all residents have access to the Council's website, they consider producing a procedure handbook.

In relation to Complainants' access to draft minutes prior to their being finalised, the Chairman explained the process by which minutes were approved.

The Chairman thanked the Complainants for their input and advised that they would be informed by letter within 20 working days of the Panel's decision.

The Complainant said he had quite enjoyed it and that this experience had been better than that with their previous Appeal Panel.

The Complainants left the hearing at 12:05pm.

The Panel adjourned at 12:05pm and reconvened at 12:15pm

Consideration was given by the Panel as to which members of staff they needed to speak to in order to clarify any issues which needed to be addressed.

The Principal Planning Officer was invited to attend the meeting.

The Chairman summarised the Complainants' complaints in relation to the redaction of information published on the Council's Planning Portal, and invited the Principal Planning Officer to respond.

The Principal Planning Officer stated that the contact details in question related to officers working for Statutory Consultees who were public bodies and as such their details were not personal and were already in the public domain, and therefore did not require redaction.

The Principal Lawyer asked whether a resident's personal details would be redacted from correspondence before being uploaded on to the Council's Planning Portal.

The Principal Planning Officer confirmed that redaction of information took place prior to correspondence being published on the Council's website and that redaction would also occur prior to documents being included in the publicly viewable planning file. He advised that he had reviewed the file in question and redacted all the email addresses of members of the public prior to the Complainant's viewing of the file, and reiterated that the contact details remaining in the file were the work addresses (including email addresses) and telephone numbers of professional bodies and consultants. He also confirmed that the online version of the file had been redacted.

The Principal Planning Officer acknowledged that there had been ongoing problems with accessing the planning portal and the Council website, which the authority was trying to resolve.

A Member referred to the Complainants' assertion that a particular developer had never been refused planning permission.

Another Member pointed out that some applications which were turned down by the Development Control Committee were then approved on appeal by the Planning Inspector.

The Principal Planning Officer said that with Housing on Allocation Sites there was a presumption in favour of development.

The Principal Planning Officer left the meeting at 12:30pm.

The Service Improvement Manager was invited to attend the meeting.

The Chairman asked for details on the Council's process for supplying information to people who wished to take their Corporate Complaint to an Appeals Panel and what information they were signposted to.

The Service Improvement Manager advised that Appeals tended to be individual in nature and related to specific issues and the Council's Complaints Procedure was on the Council website. Furthermore, the Council's website also provided email addresses for members of the public to direct their complaints to.

In response to a question from a Member regarding the supply of complaints/appeals information to members of the public who did not have internet access, the Service Improvement Manager advised that Reception staff in the Customer Contact Centre had information in hard copy to distribute as required.

The Chairman stated that part of the Complainants' complaint was that there should be a "How to Complain" brochure handed out to anyone who required it.

The Service Improvement Manager advised that, as part of its responses to complainants, the Council complaints section did advise the public how to progress complaints and who the relevant points of contact were at the various stages of the process. That information was contained in a set template to ensure consistent responses were provided.

The Service Improvement Manager left the meeting at 12:50pm.

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

RESOLVED – 1) That the exempting of the agenda document pack in respect of the first Appeal was in accordance with the relevant statutory guidance. The report and documents submitted as part of the First Complaint should not have been treated as "Private – Not for Publication by virtue of Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972" but, instead, should have been made public was dismissed.

2) That in respect of the complaint that the Complainants' submission was not located first in the document pack used at the previous appeal, which had been addressed in relation to the current Appeal, appropriate recommendations will be made in this regard.

The meeting closed at 1:10pm.