

Section A: Commercial

A1: Industrial unit

Firm invited by council to consider lease – relevance of planning permission – poor corporate liaison

1. Mr Fry, the managing director of a company, complained about the way a council dealt with his company's lease on an industrial unit owned by the council.

company for not ensuring that its operation complied with the planning consent.

Use of the unit

2. Mr Fry said that the council encouraged and offered inducements to his company to take a lease on the unit in the full knowledge of the operations proposed to be carried out and the type of machinery to be used. He said the council failed to have regard to the extent of planning permission for the site before inviting the company to take the unit. The planning permission was for certain classes of use which did not in fact cover the type of use intended. It was therefore not compatible with use by the company.

6. The Ombudsman said it would have been advisable for the company to check the planning situation. But the directors thought they had done this by raising the matter with officers of the council's economic development unit. It was not their fault that officers of that unit did not seek advice from other departments.

3. The council subsequently reacted to complaints from nearby residents by requiring the company to restrict its operations and this was detrimental to the business.

7. The council made the approach to the company to invite it to locate in the premises. The council offered financial inducements for the company to do this. The directors of the company made an oral presentation about its operations and provided the council with a full written specification of the processes involved and the type of machinery which they proposed to install.

4. Mr Fry said the council had served on the company a summons for repossession of the property. The company would therefore have to relocate and that would cause a great deal of inconvenience and expense.

8. The Ombudsman found that there was a lack of liaison between departments of the council. The officer who drafted the lease made a written comment in a memorandum which suggested that he was concerned about the need to avoid noise from the site. The economic development unit had a written warning dating from the time of the grant of planning permission that it should exercise care when granting a lease to ensure that only suitable businesses operated from the site.

Investigation

5. The council told the Ombudsman that it was at fault in granting the company a lease for the premises. But it sought to place part of the blame for the subsequent problems onto the

9. Those were matters to which the economic development unit should have had regard when negotiating the lease with the company. The Ombudsman said that, in such

circumstances, officers who were unclear whether processes were likely to contravene planning permission or give rise to complaints about nuisance should consult colleagues in the relevant departments. At the time of the granting of the lease there was no system of consultation between departments, and the fact that the lease was granted under these circumstances was maladministration. As a result of this case the council had put in place a process of consultation.

Outcome

10. The Ombudsman had no doubt that the company would not have taken the lease if it had not been for the council's approaches and encouragement. The Ombudsman commended the council for its efforts to assist the company's relocation. The Ombudsman recommended that the council should pay the reasonable costs of physically relocating the company's business to a new site.

(Report 98/C/4073)

A2: Licences

Public entertainment licence – delegation – relevant information – need for fair procedures where someone's livelihood is in issue

1. Mr O'Connell was a publican. He complained that a council failed to follow the correct procedure when considering his application for an entertainments licence. He said that the decision was taken by an officer who did not have the authority to take it, and he was not given a reasonable opportunity to make representations before the decision to refuse his application was made. He said that, as a consequence, he suffered financial loss.
3. Mr O'Connell, who had only recently taken over as licensee, had discovered that work needed to be done at the public house to satisfy fire and health and safety standards, and other works were needed to put right electrical problems. His public entertainment licence lapsed. When he applied for its renewal, the council refused the application on the grounds that it had received complaints from local residents about noise and nuisance, and that the police had recommended refusal for similar reasons.

What happened

2. The Ombudsman found that the council sent Mr O'Connell a timely reminder to renew the licence. The fact that it was not received by Mr O'Connell was not the fault of the council.

Authority to decide

4. The Ombudsman found that the officer who refused the licence did not have delegated authority to do so. That was maladministration and its consequence was that Mr O'Connell did not have his application determined at the appropriate level.

5. The officers who had been involved argued it was likely that the outcome would have been the same if Mr O'Connell's application had been determined by a committee. But the Ombudsman said the officers could not possibly know that.

6. The Ombudsman commented:

"When a person's livelihood is likely to be affected, the least a council can do is make sure that these important decisions are made at the right level."

7. As a result of this incident, the council looked again at its scheme of delegation and established a sub-committee to deal with licensing matters.

Procedures

8. The Ombudsman was also concerned about the procedures used. She said that it was the council's responsibility to make sure that the decisions it took were based on all the relevant facts. In this case, as a minimum, Mr O'Connell should have been made aware of the misgivings which the police had and the complaints which had been made against him. In that way he could, if he wished, rebut the allegations. But no such opportunity was given.

9. The Ombudsman was also surprised that officers, who were aware that one of the main concerns of objectors to the licence was noise and that this was under investigation by their environmental health colleagues, did not seek a formal view from those officers.

10. Mr O'Connell exercised his right to appeal to the magistrates' court against the refusal of the licence. The council subsequently realised that it did not have sufficient evidence to satisfy the court that its refusal of the licence was justified. The council therefore granted Mr O'Connell a licence for six months.

11. The Ombudsman said that all the evidence which was gathered after Mr O'Connell lodged his appeal should have been collected before the decision about his licence was made. The failure to consider all the relevant information, in order that a fair and balanced decision could be made, was maladministration.

12. The Ombudsman considered that, if all the evidence subsequently produced had been obtained sooner, the decision would probably have been to issue a licence for six months in the first place.

Outcome

13. The Ombudsman recommended that the council should commission an independent financial assessment of the complainant's business losses which could be directly attributed to the council's actions; and then pay Mr O'Connell that sum.

Improvements

14. The Ombudsman welcomed the council's new system to allow all parties to have their say when licence applications were being considered. That was an improvement which could help prevent a recurrence of the problems experienced by Mr O'Connell.

15. The Ombudsman noted that the council had a great deal of discretion about how it assessed licensing applications and that legislation contained little guidance. The Ombudsman therefore recommended that the council should issue guidance to members of the committee in order that decisions could be made on the basis of proper criteria and that decisions were consistent and defensible.

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