

Section F: Land

F1: Public open space

Change of use and disposal – statutory advertisement

1. Mrs Holmes complained that a council disposed of a piece of land which was public open space without first considering her objections to the disposal.

Proposal

2. The land concerned was identified as open space in the district local plan. It was used as an informal recreational area by local children.
3. The council considered developing part of the site for social housing through a housing association. Council staff visited local residents to discuss the proposed development and attended the annual meeting of the parish council. The housing association submitted a planning application. There was coverage in the local press and the council sent neighbour notification letters to the occupiers of properties adjoining the site.
4. Mrs Holmes was not notified because, although she lived in a nearby road, her property did not adjoin the site.
5. The proposal was advertised in the local press as a departure from the local plan. No major objections to the scheme were received. The council decided to transfer the land to the housing association at no cost.

Advertisement

6. By law, a council wishing to dispose of land forming part of an open space was obliged to advertise its intention in the local press and consider any objections.
7. The council placed an advertisement in a local newspaper. The advertisement contained an incorrect plan.

8. A second advertisement with the correct plan was then placed. But this advertisement contained the earlier date and was therefore not correct. A third advertisement with the correct plan and correct date was then published.

9. Five objections to the proposed disposal were received by the council and officers made written responses to them. The letter sent to Mrs Holmes stated that the council had considered the issues raised. However, the council had exchanged contracts for the transfer of the land to the housing association two weeks before the third advertisement was placed and therefore four weeks before the expiry of the period allowed for objections.
10. The Ombudsman observed that the council was in no position to take any real notice of points raised by objectors to the scheme. Rather than making a contribution to the decision making process, advertising the disposal was merely a paper exercise.

Outcome

11. Mrs Holmes was caused the frustration of being unable to have her objections properly considered by the council. The council apologised to her and introduced written procedures to prevent any similar failure, in the future, to carry out its statutory duty.
12. The Ombudsman considered these measures were a sufficient remedy for the injustice suffered by Mrs Holmes.

(Report 99/B/1389)

F2: Tenancy

Bids for farm tenancy – selection panel – member’s interest

1. Mr A complained that there were shortcomings in the way a council allocated a farm tenancy to a rival applicant. In particular, he complained that one of the selection panel, Councillor X, was related to the successful applicant.

The tenancy

2. Mr A was a tenant farmer and the council was his landlord. He was interested in acquiring the tenancy of an adjacent landholding when the tenancy became vacant.
3. Mr A and another interested farming tenant, Mr B, were required to provide the council with a written business plan with details of budgets and cashflows, the availability of capital, references and rent offered. Both Mr A and Mr B were then interviewed by a selection panel of three members of the council.
4. Following this process, Mr B was offered the tenancy.

Member’s interest

5. Councillor X was related by marriage to Mr B. Mr B was the brother-in-law of the daughter of Councillor X and godfather to the Councillor’s grandchild. They met at family events.
6. At the meeting which considered the applications for the tenancy, Councillor X declared a non-pecuniary interest because she knew both Mr A and Mr B. But she said the interests were not clear and substantial. She took an active part in the meeting and the decision making.
7. The Ombudsman considered that Councillor X’s connection with Mr B

gave her a clear and substantial interest under the *National code of local government conduct*. She should therefore have left the meeting during the consideration of both applications. The Ombudsman took this view because it seemed that the family connection between Councillor X and Mr B was enough to lead a reasonable member of the public to think that she might be influenced by it and that she might seek to further Mr B’s interests to the detriment of Mr A. In the circumstances she should have withdrawn from the meeting.

Injustice

8. The Ombudsman concluded, however, that this had not led to Mr A losing the tenancy. The other two members of the panel and the officers advising the panel found Mr B’s application the better of the two. Their views were reached on the merits of the applications and not because of the influence of Councillor X. The Ombudsman believed that if Councillor X had withdrawn, as she should have done, the same decision would have been reached.
9. However, the maladministration reasonably led Mr A to feel that the involvement of Councillor X in the selection process might have been prejudicial to his interests. As a result, Mr A suffered distress and annoyance.

Outcome

10. The Ombudsman recommended that the council should review its procedures; and make Mr A an *ex gratia* payment of £500.

(Report 99/B/2400)