

Report

on an investigation into
complaint no 12 009 272 against
Bolsover District Council

5 November 2013

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

This report has been produced following the examination of relevant documents and a discussion with the complainant.

The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Key to names used

- Mrs B - the complainant
- Sherwood Lodge - the Council's former headquarters

Report summary

Land

Mrs B complains about the way the Council decided to appropriate land at its headquarters to sell for development.

In 2011 the Council decided to explore the disposal of the land and buildings it used for its headquarters and to review the options for new premises. The Council was unaware the site included land which was designated as public open space in 1941 as it did not hold records from its predecessor council. Members of the public including the complainant had used the land for recreational purposes for many years.

The Council's Disposal and Acquisition of Land and Property Assets Strategy, which sets out how the Council should consider any disposal of land, does not include any reference to land designated as public open space.

Instead of advertising its intentions for the disposal of the land designated as public open space as required under the Local Government Act 1972, the Council decided to appropriate the land for planning purposes in a meeting of its Executive from which the public were excluded. Its intention was to thwart a village green application from residents which would have delayed the sale and development of the land. As the meeting was held in private, members of the public were not aware of the Council's intention to appropriate the land and had no opportunity to object.

The Council subsequently decided to sell the land to a retailer and purchased an alternative site for its headquarters.

The complainant was outraged that she and other members of the public had not been consulted before the Council made its decision to appropriate the land.

The Ombudsman finds that the Council:

- a. failed to hold records from its predecessor or to check the status of the land prior to appropriation;
- b. did not advertise its intention to dispose of the public open space and consider any objections before making its decision;
- c. did not consider the need for public open space within the locality when making the decision to appropriate the land; and
- d. did not follow good practice when it excluded members of the public from the meeting to consider appropriation.

Finding

Maladministration causing injustice

Recommended remedy

The Ombudsman considers the publication of this report provides part of the remedy as it highlights the faults in the processes the Council followed in making the decision to appropriate the land.

She also recommends the Council apologises in writing to the complainant, pays her £250 to acknowledge her outrage and the loss of opportunity she experienced, and revises its Disposal and Acquisition of Land and Property Assets Strategy to include procedures on how to deal with land designated as public open space.

Introduction

1. Mrs B complains the Council wrongly appropriated land for planning purposes which was designated as public open space. It also wrongly excluded the public from the meeting when it made the decision.

Legal and administrative background

2. The Local Government Act 1972 ('the Act'), Schedule 12A(6b) entitles a council to exclude members of the public from meetings where it intends to make an order or direction under any enactment.
3. Schedule 12A(5) of the Act entitles a council to keep legally privileged information confidential.
4. Section 122(1) of the Act entitles a council to appropriate, for any purpose for which it is authorised, land which belongs to it and which is no longer required for the purpose for which it was held immediately before appropriation.
5. Section 122(2A) of the Act requires a council to advertise its intention to dispose of land designated as public open space in a local paper for two consecutive weeks and to consider any objections to the proposal.
6. The Council's Disposal and Acquisition of Land and Property Assets Strategy (March 2006) sets out how the Council should consider any disposal of land. It does not refer to disposal of land designated as public open space.
7. Section 20 of the Open Spaces Act 1906 defines open space as land which is used for the purposes of recreation.
8. If land is public open space by right, it would not meet the test for registration as a village green under the provisions of the Commons Act 2006.

Investigation

9. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

Background

10. Mrs B lives near the Council's former headquarters, Sherwood Lodge. Part of the land at the rear of the Lodge was designated as public open space in November 1941 by Bolsover Urban District Council. Mrs B and many other members of the public have used the land for recreational purposes regularly over the intervening years.

What happened

11. In March 2011 the Council's Executive decided to explore the disposal of the land and buildings it used as its headquarters and to review the options for new premises.

12. In June 2011 the Council's Executive considered a report about the possibility of residents making a town or village green application in respect of the open space at its headquarters. A successful village green application would mean the land could not be developed. If the land was appropriated for planning purposes the planning permission subsequently granted would take supremacy over any successful village green application. The public were excluded from the meeting under the Local Government Act 1972, Schedule 12A(6b). This is where the Council intends to make an order or direction under any enactment.
13. The report stated that to validly appropriate the land for planning purposes, members must resolve that the area of land is no longer required for the purposes for which it is currently used. It stated the land was not currently being used for any local government related activities. The report did not say that the land was dedicated public open space. The Executive decided the land was surplus to requirements and was required to be held for planning purposes "in the interest of the proper planning of the area". It resolved to appropriate the land for planning purposes under section 122 of the Local Government Act 1972.
14. In August 2011 the Council entered into an exclusivity agreement with one retailer based on the evaluation of bids from a number of retailers.
15. In March 2012 it agreed to sell the original site of its headquarters to the selected retailer.
16. On 9 May 2012 the Council's Executive held an extraordinary meeting to consider a petition to scrap the development plans for the headquarters organised by the small traders in the area. The Council rejected the petition.
17. Mrs B obtained documentary evidence of the status of the land as dedicated public open space from the County Council's archives. She advised the Council of the status in June 2012.
18. The Council received a planning application for the site in July 2012. This was for the demolition of the existing council offices and dwelling houses and the erection of a food store, petrol filling station, service yard, car parking and associated works.
19. In July 2012 local residents made an application to the County Council to register the open space as a village green.
20. In August 2012 the Council purchased an alternative site for use as its headquarters.
21. On 21 December 2012 the Council granted planning permission for the development of a supermarket on the site.
22. The County Council rejected the village green application in June 2013.

Council's views

23. The Council says it was not aware of the public open space designation when it considered the disposal of the land. It says if it had known, there would have been no need for the appropriation to be done in the way it was because it would have

known there was no prospect of a successful village green application. There are a number of reasons which it says justify its decision not to consider the land was used as public open space prior to appropriation. These are:

- the land had formed part of the Council's main office complex since 1994. The land was used infrequently by the public;
- the land was managed by its Property Services, not its Leisure department. Property Services manage and maintain the Council's municipal buildings;
- the Council had requests from certain local groups to use the land. This indicates it was not used by the Council as open space and not perceived by the public as such;
- the use of the land had been significantly developed since 1941 and the Council had developed it in the 1970s and in 1993 without any objections by the public. All the changes required planning permission and therefore consultation took place with the public. When new council offices opened in 1994, the main grassed section of the grounds to the Lodge was used as an overspill staff car park;
- there is nothing in the title deeds to suggest the land was open space.

24. In its response to Mrs B's complaint the Council states the purpose of appropriation was to reduce the effect given by any registration of a village green. It says that appropriation of land for planning purposes is considered to be a legitimate way to protect land that may be needed for development from the effect of any subsequent village green registration application.
25. The Council says Mrs B would only have suffered injustice if the village green status had been granted at which point appropriation would have taken effect. It says that as the County Council has rejected the village green application, the purpose of appropriation is redundant and so Mrs B has not suffered any injustice.
26. It maintains there was no requirement for the Council to consult members of the public on its intention to appropriate the land for development purposes. This is based on its view that the land was used as offices not open space, so there was no requirement to consult.
27. Section 20 of the Open Spaces Act 1906 defines open space as land which is used for purposes of recreation. The Council says when the appropriation took place, it could not be said the land **was** used for recreational purposes, and so it was not land that appeared to fall within the definition of open space. Therefore the Council believes it was reasonable for it to consider it was not necessary to advertise the appropriation.
28. The Council says that the public could be excluded from the meeting to consider the appropriation of the land. It says information is exempt from disclosure if the public interest in maintaining the exemption outweighs the public interest in disclosing it. The Council was concerned that if it revealed its proposal to

appropriate the land, members of the public might submit a village green application before it made the decision to appropriate. This would have spoiled the purpose of appropriation and potentially damaged the viability of the development on the site.

29. The Council considers the success of the scheme outweighs the interests of the public. It says it has to consider the interests of the wider public not just those living in the locality. It believes all the residents of its area would benefit from the regeneration and the savings which will be achieved in relocating the council offices elsewhere. It hopes that such savings will assist in tackling the budget deficit the Council is facing.
30. There were two public consultation events. On 2 November 2011 the Council set out a basic outline of its proposals. The developers held a two day consultation in April 2012.

Findings

31. The Council should have held records from its predecessor authority and so known the land at its former headquarters was dedicated open space. It would also have been good practice for the Council to have checked the status of the land and/or carried out a search with other agencies. Being aware that there was open space should have alerted it to check whether it was dedicated. These failures were fault.
32. The awareness that it was dedicated would not have prevented the Council from appropriating the land for planning purposes. But it did require the advertising and consideration of any objections prior to appropriation. The Council's failure to do this was also fault.
33. Subsection(1) of the Local Government Act 1974, section 122, requires the Council to decide that the land is no longer required for the purpose for which it was held immediately before the appropriation. This requires a council to consider the public need within the locality for the existing use. The Council should have known that the land was held as public open space and consideration should have been given in the report as to whether it was no longer required for this purpose. No such consideration was given in the report because the Council thought it was just offices and associated land. This was fault.
34. The Council took the decision to appropriate the land having excluded members of the public from the meeting. It did so under Schedule 12A, paragraph 6b, of the Local Government Act 1972 which entitles a council to exclude members of the public from a meeting when it intends to make an order or direction under any enactment. I would expect a council always to err on the side of transparency with members of the public on such matters. If members of the public had been included, it would have become clear the land was public open space. To exclude the public was therefore not good practice.
35. The Council has pointed out it was entitled to exclude the public because the report contained legally privileged information. This was not the reason given in its Executive report. If this had been the case, there could have been two reports.

One with the legal advice could have been kept confidential under Section 12A, paragraph 5 of the Local Government Act 1972. The other report about the appropriation could have been open to the public.

36. We note two consultation exercises were carried out but these took place after the decision to appropriate the land was taken in June 2011.
37. The Council's Disposal and Acquisition of Land and Property Assets Strategy does not refer to the disposal of land designated as public open space. Given the difficulties here in identifying public open space and the requirement on councils to advertise their disposal and consider any objections, this is fault.

Injustice

38. As the Council did not advertise its intention to dispose of the land, Mrs B and others were denied the opportunity to object to the disposal and to have their objections considered.
39. Mrs B experienced outrage about the Council's failure to consult the public and the way the Council went about the appropriation process.
40. Mrs B and others will never know whether, had the Council given them the opportunity to object, the outcome would have been different.

Recommendation

41. The publication of this report provides part of the remedy for Mrs B as it highlights the faults in the processes followed by the Council in making the decision to appropriate the land.
42. The Council should also:
 - apologise in writing to Mrs B;
 - pay Mrs B £250 to acknowledge the outrage and the loss of opportunity she has experienced;
 - revise its Disposal and Acquisition of Land and Property Assets Strategy to include procedures on how to deal with land designated as public open space and report the outcome to me within six months of the date of this report.



**Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB**

5 November 2013