

Local Government &
Social Care
OMBUDSMAN

Recording planning decisions



*Guidance for
planning
practitioners*

September 2018

Contents

Executive summary	1
Key themes:	
Consideration of material planning conditions	3
Information taken into account	4
Clear records of a decision and reasons	6
Good practice for councils	8
Resources for councils	8
Relevant legislation	9
Planning committee decisions	10
Appendix A	11



Executive summary

Each year we receive more than 2,000 complaints and enquiries about local authorities' planning and development services. Among the investigations we uphold, common areas where councils get it wrong are failing to explain properly the reasons for their decisions or overlooking material considerations.

This guidance shares the insight from our investigations to help councils learn from the mistakes of others, and to review their own practice and policies in this area. We hope it will assist councils to reach robust decisions on planning matters.

It also explains our general approach to complaints in this area, illustrated by some case studies. These are grouped into three themes:

- > Clearly setting out and explaining how material planning considerations have been considered
- > Making it clear what has been taken into account
- > Making clear records of decisions and the reasons for them

We then provide a good practice section with key things to remember when considering, and recording decisions for, planning matters.

The final sections summarise the relevant legislation we consider complaints against, and provides links to our other useful resources for planning practitioners.



Recording planning decisions – guidance for councils

Why we are releasing this guidance

In many areas of their work, councils are required by the Openness in Local Government Bodies Regulations 2014 (see ‘Relevant legislation’ section later) to provide a written record of certain decisions made by officers. Now two recent court judgments have confirmed these requirements apply to delegated decisions on both planning applications and planning enforcement.

We also know that some councils have abandoned writing officer reports when assessing some planning matters. While there is no legal requirement for councils to produce these reports, we feel they do serve a purpose in providing a record of how material issues were considered and weighed. If councils are no longer producing officer reports, they should ensure they are recording decisions in a transparent manner.

It is also timely to consider these issues with the General Data Protection Regulation (GDPR) 2016 now in force. The new laws should not create a situation where planning departments retreat from an open-information culture, because of expectations of challenges about privacy. As an appendix to this document we have included our guidance on the standards we maintain for publishing our decisions within the same climate. Councils may find this useful when reviewing their own processes for recording decisions.

Our approach

We will consider whether a council’s actions or inactions are in line with relevant legislation and also check them against the broader test of maladministration.

We would not expect a council to produce a formal written report every time it made a decision – there are many activities that do not legally require a written record. However, we would expect to see a contemporaneous record showing how a council considered any material planning matters and any comments from the public, before reaching its decision about what action to take. We may consider failure to do so as fault.

It is good practice to make planning files available on websites, and include the officer reports. Many councils do this, but not all publish enforcement decisions.

For those councils that have stopped writing officer reports for certain decisions, we would encourage them to ensure any alternative arrangements comply with the Openness in Local Government Bodies Regulations.

These regulations do not apply to decisions made by planning committees. However, councils are required to summarise reasons for granting and refusing permission, and the courts have said they must provide a more detailed explanation when a committee goes against an officer’s recommendation.

We illustrate our approach with some examples of complaints we have investigated.



Key themes

Consideration of material planning considerations should be clearly set out and explained

Failure to consider impact of windows in officer report

What happened

The council received a planning application for a two storey extension to Mr X's neighbour's property. Mr X objected to the extension and said it would result in his neighbours being able to look into his bedroom window.

The council's case officer assessed the impact of overlooking from the proposed development on Mr X's bathroom window but failed to consider the impact on his bedroom. A bathroom is not considered a habitable room, so councils will not usually give much weight to the impact of development on these spaces.

However, the council should have set out its consideration of the impact on Mr X's bedroom window in its report. Failure to do so was fault.

Learning point

Ensure there is evidence that relevant material planning considerations have been addressed and recorded before reaching decisions on planning matters.

Failure to properly consider relationship between buildings

What happened

Mr B's neighbour applied for planning permission for a dormer extension to his property. The council's case officer report considered the impact of the dormer on Mr B's property in terms of overlooking and considered the council's policy on separation distances.

However, the council's officer report contained inaccuracies in terms of the distance between the properties and failed to show whether the officer had considered the fact there is a significant difference in land levels between the properties.

We found that the distance between the properties was still within what was considered reasonable in terms of the council's planning policies. There was also evidence from the officer's notes of a visit to the properties that he was aware of the difference in land levels.

Learning point

Ensure that there is evidence that important issues and observations from any site visits are summarised before reaching a decision on planning matters. Make sure that any measurements referred to are accurate.



It should be clear what has been taken into account

Failure to properly explain plans

What happened

Mrs X lived next to a poultry farm. The farm was subject to planning conditions requiring hedges on three boundaries to be kept at three metres high. This condition was required to provide screening for local residents.

The council received a planning application to replace five existing poultry sheds with four new sheds. The plans showed existing hedging on two boundaries but not the third boundary. The council's officer report on the application took account of existing "mature hedgerows" when considering the appearance of the site and impact on local people.

The council's planning committee considered the application and a case officer report which recommended it grant planning permission. A member of the committee asked if existing hedging was to be retained. A senior planning officer said it was his understanding that "*the idea is actually to supplement the planting that's on the site at the moment*".

The council granted planning permission and imposed a condition requiring the developer to provide details of a landscaping scheme.

When the council received an application to discharge the landscaping condition there were only details of planting on two boundaries. The council discharged the condition.

The farmer then removed an existing hedge from one of the boundaries. The hedge had been subject to a planning condition in the original planning permission. The council found it was unable to take enforcement action because its decision to discharge the recent landscaping scheme overrode the original planning permission which required the hedge to be maintained.

We found that officers and the committee were unclear about what they were granting planning permission for, and the effect such a decision would have on existing permissions and controls on site. We said this was fault.

Learning point

Ensure any decision clearly sets out what is being considered and the impact this will have on any existing permissions and planning controls.



Failure to record and consider objections

What happened

Mr A objected to his neighbour's planning application for a bungalow because he said the plans showed the development would take place on land he owned. Mr A said his neighbour had not served the correct certificates to say that Mr A owned part of the land.

The council's officer report did not include Mr A's objections and the council granted planning permission for the bungalow. When Mr A found out he emailed the planning officer and received a reply saying she was out of the office. Mr A emailed her colleague who said they would look into it.

There were delays in the council replying to Mr A and he was forced to seek legal advice. Mr A's solicitor threatened to judicially review the council's decision to grant planning permission because it had not considered Mr A's objections, and the neighbour had not served the correct land ownership certificates. The council agreed to revoke the planning permission.

We said the council was at fault for failing to consider Mr A's objections. Had it done so, it is unlikely it would have allowed the application to progress without the property certificates and Mr A would not have had to pay for legal assistance.

Learning point

The council should summarise objections and comments it receives about planning applications so local residents and other bodies can see what was taken into account.



There should be a clear record of a decision and the reasons for it

Failure to record reasons for decision made by a planning committee

What happened

The council received a planning application to convert a disused pub into a place of worship. The council received objections from local people about the potential increase in traffic in the area and noise at unsociable hours.

The council's officer report recommended the council refuse planning permission to change the use of the building. It said:

"it is considered the development would result in a significant increase in disturbance to neighbouring residents. This disturbance would be in the form of car doors banging, engines revving, talking in and around the residential terraced areas where parking would need to occur as a result of the lack of parking at the premises and further highway restrictions... This disturbance would be considered detrimental to the amenity of neighbouring residents."

The application was dealt with by the council's planning committee which considered the officer report and listened to two councillors who were in favour of the application and a local resident who objected to it. During the committee meeting the developer said that parking would be controlled by marshals during peak times.

The council's planning committee decided to grant planning permission. The minutes of the committee meeting said:

"The proposed change of use to a place of worship (Use Class D1) has been assessed against [relevant local policies] and in part assessed in terms of residential amenity, visual amenity and highway safety and is considered to be acceptable."

We said there was fault as the council failed to record its reasons for granting planning permission. Although the council has said the development is acceptable "in terms of residential amenity, visual amenity and highway safety" it failed to give the reasons why it had reached these conclusions. The council was only required to provide summary reasons. However, it was not enough to simply state that the development complied with policies and was acceptable.

Learning point

Council planning committees should ensure they record clear reasons for their decisions, however briefly stated, if they go against officer recommendations.



Failure to record reasons for not taking enforcement action

What happened

Mr C lives close to a new housing estate. Part of the estate was to be kept for public open space. The council has a permissive path agreement that allows the public to cross the land to access a nearby playground.

The landowner widened the footpath so it could be used by farm vehicles. The council initially said this would need planning permission but then decided it would not take enforcement action because the vehicular use was not causing harm. The council did not write to Mr C explaining why it was not taking action.

Mr C also complained the landowner was using the land to train sled dogs. The council said occasional use for sled dog training would not amount to a material change of use that would require planning permission.

We found the council had not kept a record of the reasons for its decisions not to take enforcement action against the landowner. The council acknowledged it did not always respond to Mr C's complaints and had not informed him of its decisions. We also found no records of the council visiting the site and it had solely relied on the number of complaints it received as an indicator of the potential harm being caused. The council agreed to carry out further investigations into activity on the land.

Learning point

Ensure that records are kept of decisions made and reasons for them, even if the decision is to take no action.



Good practice for councils

- > Ensure reports are concise and written in plain English where possible to ensure they can be understood by a range of people.
- > Ensure there is a record of how all key material planning considerations were considered.
- > Ensure comments from local people and other bodies are summarised so people can see what was considered.
- > Clearly explain what is being considered and the impact on any existing permissions and planning controls.
- > Have a system for recording reasons for decisions, even if the decision is that no action should be taken.

In many cases we see councils already making good use of template documents to explain their decisions.

We publish all our decisions online except in rare circumstances where there is a good reason not to: for example, if there is a risk of identifying the complainant. We have included our decision standards in Appendix A, which councils may find helpful when reviewing existing policies.

Resources for councils

We have a suite of resources available to help support good complaint handling in planning:

- > [Focus Report](#) – Not in my backyard: Local people and the planning process
- > [e-Newsletter](#) – subscribe to get our latest planning decisions sent to your inbox each week
- > [Complaint handling training](#) – we offer a specialised course covering planning matters
- > [Our decisions](#) – a searchable resource of all our published decisions



Relevant legislation

Openness in Local Government Bodies Regulations 2014

Since August 2014 councils have been required to provide a written record of certain decisions made by officers. This applies to decisions which would otherwise be made by the council or one of its committees or sub-committees, but where the officer is acting under delegated authority. A council's constitution explains which decisions can be made by officers under delegated authority and this usually includes a range of decisions on planning.

The regulations say written records must be produced where *“the effect of the decision is to... grant a permission or license... affect the rights of an individual... [or] award a contract or incur expenditure which, in either case, materially affects the relevant local government body’s financial position”*.

Councils must produce a written record of the decision as soon as reasonably practicable and the record must contain:

- > the date the decision was taken;
- > a record of the decision taken along with reasons for the decision; and
- > details of alternative options, if any, considered and rejected.

The written record and any background papers must be made available to members of the public:

- > at all reasonable hours at the council’s offices;
- > on the website of the council, if it has one; and
- > by such other means as the council considers appropriate.

The written record must be retained by the council and made available for inspection for a period of six years from the date of the decision. Background papers must be retained for a period of four years from the date of the decision.

The courts have confirmed that these regulations apply for delegated decisions relating to planning applications (*Shasha and ors v Westminster City Council* (2016) EWHC 3283 (Admin)) and also delegated decisions relating to decisions about planning enforcement matters (*Usher v Forest Heath District Council* (2017) EWHC 2511 (Admin)). These regulations may have wider applications and also apply to other planning matters, such as decisions to discharge conditions.



Planning committee decisions

Not all planning decisions are made by officers. Applications for large and controversial developments are often considered by the council's planning committee, made up of local members. Members usually consider a report written by officers which recommends whether a planning permission should be granted or refused and what conditions might be appropriate. The committee will then consider whether it agrees with the officer's view.

The Openness in Local Government Bodies Regulations 2014 do not apply to decisions made by committees. However, councils must give written notice for the following decisions:

- > Where planning permission is granted subject to conditions. The notice must state "clearly and precisely" the council's full reasons for each condition imposed.
- > Where a planning application is refused. The notice must state "clearly and precisely" the full reasons for the refusal "specifying all policies and proposals in the development plan which are relevant to the decision".

The courts have said that where a planning committee goes against officer advice it must provide a fuller summary than if followed the officer's recommendation. (*R (Telford Trustee No1 Limited and another) v Telford & Wrekin Council and Asda Stores Limited* [2011] EWCA Civ 986, and *R (Ling (Bridlington) Lts and others) v East Riding of Yorkshire Council* [2006] EWHC 1604 (Admin))

The courts have also said that where a planning committee rejects the advice of officers some statement of reasons may be required. The courts said the information provided by the council should leave no room for "genuine doubt...as to what (it) has decided and why". (*Dover District Council v CPRE Kent v China Gateway International Ltd* [2017] UKSC 79).

Planning decisions for applications that require an Environmental Assessment

In certain circumstances, applicants are required to submit an Environmental Impact Assessment (EIA) with a planning application.

In all cases involving determination of an application for EIA development by a committee or an officer, councils must inform the public of the decision, by advertisement or other means and make a statement available on the Planning Register which includes the main reasons and considerations on which the decision is based.



Appendix A

We have published guidance to our staff setting out our decision standards on our website. This assists us in making consistent and legally sound decisions which are easy to understand in line with our legislation.

There are seven specific decision standards:

1. *Complaint heard and understood*
The matter being considered is stated succinctly and we will clearly state what is being considered.
2. *Accurate*
All facts are accurate and there are no errors in the document.
3. *Easy to defend in court*
Reasoning is clear, sound and logical. Relevant law and guidance is applied correctly. The decision statement considers all essential points.
4. *Confidentiality*
No names or details identifying people unless needed to explain the decision. We find it possible to set out the relationship between properties without using names and addresses.
5. *Structure*
The decision statement follows a standard structure using clear headings and numbered paragraphs. Any events listed are in date order.
6. *Easy to read*
Our decisions are written in plain English and we avoid jargon.
7. *Focused*
We only include material information needed to explain the decision. We do not include extraneous detail.

Details of our decision standards, the structure of our decisions and how we protect anonymity can be found in chapters 6, 7 and 8 of our Statement of Reasons manual, published at www.lgo.org.uk/information-centre/staff-guidance



**Local Government and Social Care
Ombudsman**

PO Box 4771

Coventry

CV4 0EH

Phone: 0300 061 0614

Web: www.lgo.org.uk

Twitter: [@LGOmbudsman](https://twitter.com/LGOmbudsman)