



WARDS AFFECTED

All Wards

(City Wide – Corporate Issue)

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

**CABINET
COUNCIL**

**12 March 2007
29 March 2007**

**FINDINGS OF MALADMINISTRATION
BY THE LOCAL GOVERNMENT OMBUDSMAN
(OMBUDSMAN REPORT 06/02002)**

Report of the Town Clerk and Corporate Director of Regeneration and Culture

1. PURPOSE OF REPORT

- 1.1 This report sets out the findings made by the Local Government Ombudsman (LGO) following the investigation into a complaint that the Council failed to stop unauthorised use of business premises as a place of worship
- 1.2 This report also sets out the remedies that the LGO recommends the Council to implement to provide just satisfaction to the complainant for the findings of maladministration leading to injustice and invites the Council to consider whether it accepts the recommendations
- 1.3 In accordance with LGO's practices the names used within this report are not the real names of the individuals concerned for reasons of confidentiality

2. SUMMARY

- 2.1 Mr Ash complained about the unauthorised use of a business unit on an industrial site by a religious group. Mr Ash operates a business from the site and also owns a number of the other units on the site. He complained that the continued use of by the religious group conflicted with the interests of the other users of the site. In particular that the car park was frequently blocked by visitors making access difficult for legitimate users. He was concerned that the situation

was dangerous, particularly given the number of children who attended the mosque. He also complained that what he believed to be an inappropriate use of the premises had discouraged some potential lessees from taking up a lease of his units and that some existing lessees had left. Consequently he had suffered financial loss.

2.2 The Ombudsman investigated the complaint which involved consideration of the complex planning history in relation to a sensitive community issue. While the Ombudsman accepted the Council's approach to the enforcement process and that the decision of the Development Control Committee to agree a subsequent planning permission was not unreasonable, he did find shortcomings in the recording of the committee's reasons for granting permission which constituted maladministration."

2.3 Following investigation by the Local Government Ombudsman they issued a finding of maladministration causing injustice

The Ombudsman recommends that:

- (a) that the Council make a payment of £1000 to Mr Ash
- (b) that the Council report to the Ombudsman within three months on the progress that has been made to ensure that the conditions attached to the consent are met

3. RECOMMENDATIONS

3.1 The Cabinet is asked to note that the Corporate Director of Regeneration and Culture will

- (a) recommend that the Council accepts the Ombudsman's recommendations
- (b) report to the Ombudsman within three months on the progress that has been made to ensure that the conditions attached to the consent are met
- (c) note that steps have been taken to ensure that minutes of the Planning and Development Control Committee do include a summary of reasons for decisions taken, in particular when they are contrary to the initial officer recommendation

3.2 The Council is asked to:

- (a) accept the Ombudsman's recommendations and actions with the payment of £1000 released to Mr Ash together with the other recommendations proposed by Cabinet.

4. HEADLINE FINANCIAL AND LEGAL IMPLICATIONS

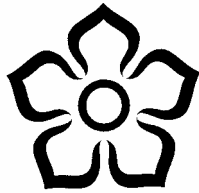
- 4.1 The payments recommended by the LGO will be met from the revenue budget of the Regeneration & Culture Department – Mike Richardson - tel – 2526965
- 4.2 Under the provisions of the Local Government Act 1974 an investigation report by the LGO which finds maladministration leading to injustice must be placed before the authority within 3 months of receiving the report. The approval of payments under section 92 of the Local Government Act 2000 (payments for maladministration) is a Council function by virtue of paragraph 48 of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000

5. REPORT AUTHOR/OFFICER TO CONTACT:

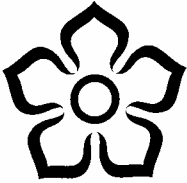
Andy Keeling Service Director (Planning & Policy),
 Regeneration and Culture Department
 Tel: 252 7380

Johanne Robbins, Ombudsman Link Officer
 Resources, Access & Diversity Department
 Tel: 252 7115

Key Decision	No
Reason	Part of the policy and budget framework
Appeared in Forward Plan	No
Executive or Council Decision	Council



Leicester
City Council



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City Council

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SUPPORTING INFORMATION

1. REPORT

The Ombudsman findings are summarised as follows:

- 1.1 The report concerns issues regarding the Council's failure to give and record a proper explanation for the decision to approve the planning application against the officer's advice.
- 1.2 Mr Ash complained that there was unauthorised use of a business unit on an industrial site by a religious group.
- 1.3 The business unit conflicted with the other users of the site in particular the car park was frequently blocked.
- 1.4 He also complained that what he believed to be an inappropriate use of the premises has discouraged some potential lessees from taking up a lease of his unit and that some lessees had left.
- 1.5 The religious group had occupied the premises where it held religious ceremonies and education classes since 2003. In March 2003 the Mosque

- applied for change of use from Industrial to Educational and Religious.
- 1.6 The application was deferred to allow for a site visit.
 - 1.7 In June 2003 the Council refused the application.
 - 1.8 Following the Council's refusal of the application for change of use the Mosque continued to use the unit for prayer and educational use.
 - 1.9 The matter was referred back to the Development Control Committee and it was decided at its meeting of 27 July 2003 to defer the service of an enforcement notice for three months to allow the group to find alternative premises.
 - 1.10 In September 2003 Mr Ash complained to the Council that unauthorised activity continued.
 - 1.11 On 19 November 2003 the Council served a notice under Section 330 of the Town and Country Planning Act as a precursor to formal enforcement action.
 - 1.12 Alternative premises had not been found and on 23 December 2003 an Enforcement Notice was served with an effective date of 1 February 2004.
 - 1.13 The Mosque appealed which held further action in abeyance, pending the outcome.
 - 1.14 In June 2004 the appeal was dismissed with an effective date for compliance of 2 July 2004.
 - 1.15 The Council held meetings with the interested parties including Mr Ash to seek a resolution.
 - 1.16 Four separate meetings had failed to secure an acceptable resolution.
 - 1.16 It may have been possible to negotiate the purchase of an alternative unit from Mr Ash but there was a failure to agree a price.
 - 1.17 At a meeting on 17 December 2004 it was agreed that the Council would appoint an independent surveyor to act as arbiter, the cost of his report was shared between the Mosque and Mr Ash.
 - 1.18 The Council advised that failing a successful outcome, enforcement would recommence.
 - 1.19 In January 2005 the Ombudsman received a letter from the MP for a neighbouring constituency who expressed his concern at the continuing delay. He had been approached by a member of the Mosque Committee, and also by Mr Ash seeking intervention.
 - 1.20 In February 2005 the independent valuer confirmed that it had not been possible to negotiate a settlement by the purchaser or lease of a different unit.

- 1.21 In April 2005 Mr Ash through his MP complained again at the delay in pursuing enforcement action.
- 1.22 The Council advised the Ombudsman that the possibility of the Mosque buying or leasing an entirely different unit was being considered.
- 1.23 In June 2005 representatives of the Mosque submitted a planning application to use an additional unit on the same site in conjunction with that currently being used.
- 1.24 On 20 June 2005 instructions were given to proceed with action against the Mosque for breach of the enforcement notice.
- 1.25 On 24 June Officer A – Team Leader wrote to a Trustee of the Mosque stating that assuming that planning permission is granted for the new application then it may be that the prosecution can be halted before going to court.
- 1.26 In September 2005 officers from the Council's enforcement team, carried out a surveillance exercise at the site.
- 1.27 On 3 October 2005 Officer B wrote to a Trustee of the Mosque reporting to him that the Council's surveillance exercise had demonstrated that the premises continued to be used as a place of worship contrary to the provisions of the Enforcement Notice which had been issued and that consequently an offence had been committed.
- 1.28 On 18 October 2005 enforcement officers visited the site and met with several Trustees of the Mosque. Officer B explained that as an enforcement officer it was his role to establish whether or not the Enforcement Notice was being complied with and if not to report to the Council's Legal division. It was suggested that the Trustees should identify one representative who would be interviewed and given the opportunity to explain the Trustees position.
It was arranged for the interviews to be carried out on 2 November 2005 but the Trustees did not attend and offered no explanation or apology.
- 1.29 On 1 November 2005 the planning application was considered by the Council's Development Control Committee but deferred to allow members to visit the site.
- 1.30 On 15 November 2005 the application was considered. Officer A had written a report which stated that the issues were essentially the same as those considered at the time of the original application. He recommended that the application be refused.
- 1.31 The minutes of the meeting record that Councillor X seconded by Councillor Y proposed that the application be approved with extra conditions put in place around the blocking of the access door to unit A.
- 1.32 Mr Ash complained to the Ombudsman in February 2 2006 as the unauthorised use of unit A continued. The Ombudsman made further enquiries.

1.33 "The Ombudsman's enquiries involved interviewing relevant officers within Regeneration and Culture and Legal Services who had dealt with the matter, consideration of the planning history and in particular the decision taken by the Development Control Committee in November 2005. A councillor was also interviewed. Officers were able to comment on the Ombudsman's draft report. In particular, officers wanted the Ombudsman to understand the very sensitive community issues that arose and the steps taken to try to resolve the situation. The Ombudsman concluded that the decision taken by the Development Control Committee on 15th November, contrary to the officer recommendation, should have been minuted so that the committee's reasons were clear. The outcome of the committee's decision was to effectively put on further hold the enforcement process. While the Ombudsman accepted that the committee's decision was not unreasonable, maladministration was caused by the lack of minuted reasons."

2. THE OMBUDSMAN'S FINDINGS

2.1 The Ombudsman concluded that:

2.2 For the reasons given above the Ombudsman found that there had been maladministration by the Council which has caused injustice to the complainant

2.3 To Put things right the Ombudsman has recommended that the Council should:

- a) make a payment of £1,000 to Mr Ash
- b) that the Council report to the Ombudsman within three months on the progress that has been made to ensure that the conditions attached to the consent are met

3. COUNCIL'S RESPONSE

3.1 The planning application was not a departure from Local Plan Policies. Although the application site was allocated for primary employment use in the previous City of Leicester Local Plan, Policy C20 gives criteria for places of worship that do not preclude the use of employment land

3.2 Whilst it is accepted by officers that the minutes of the DC Committee meeting on 15 November do not specify the reasons for the decision. There had been a previous site visit and a lengthy discussion on the officer report had taken place.

3.3 The mosque group had a particular local need to remain in the premises and had not been able to find any alternative premises.

3.4 The joint use of the two industrial units whilst not ideal represented an improvement over the existing situation in that movement of people to and from the mosque would be restricted to the southern end of the site, thus lessening conflict with industrial traffic at the northern end.

- 3.5 The decision was supported by conditions which, amongst other things, required the doors to unit 3 to be blocked up except for emergency egress.
- 3.6 The decision was unanimous and the DC Committee spent some time considering and discussing it.
- 3.7 In view of the mosques failure to comply with the planning permission granted by the committee on 15 November, DC enforcement staff are investigating this alleged breach.
- 3.8 Officers felt that on balance a finding of maladministration in relation to the DC Committee's decision is harsh as essentially the failure to record the reasons for the decision in the minutes was an administrative oversight. Officers do understand, however, the complainant's frustration and do accept that matters could have been pursued more vigorously despite the difficulties they faced.
- 3.9 In accordance with the Ombudsman's recommendations, planning enforcement officers have continued to monitor the situation to enable a report to be sent back to the Ombudsman, and if the religious group are found not to be complying with the planning conditions, a file will be prepared for submission to Legal Services for consideration as to whether a prosecution should be instituted for non-compliance with the enforcement notice."

4. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

4.1 Financial Implications

The payment will be made from the Regeneration and Culture Department's Budget – Mike Richardson Head of Development Control - 252 7244

4.2 Legal Implications

The Council has power to make the compensation payment recommended under provisions contained in the Local Government Act 2000.

Anthony Cross
Head of Litigation
x6362"

4.3 Other Implications

OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph References within report
Equal Opportunities	NO	
Policy	NO	
Sustainable and Environmental	NO	
Crime and Disorder	NO	

Human Rights Act	NO	

5. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

- 5.1 Local Government Act 1974 (Section 30), press announcements have been made and copies of the report have been made for public inspection at the Customer Services Centre
- 5.2 A copy of the full report is appended to this report
- 5.3 The relevant Legal Services' file containing, in part, exempt information."

6. CONSULTATIONS

- 6.1 This report has been produced in consultation with the Regeneration and Culture Department and the Legal Services Section in Resources

7. REPORT AUTHOR

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 Regeneration and Culture Department
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