

## Public Accounts Committee's inquiry into effectiveness of Local Planning Authorities in Wales

### Scoping paper

#### Overview

- [My role](#)
- [Trends in my planning and building control casework](#)
- [Themes arising in my casework](#)
- [Planning services and level of resourcing](#)
- [Annex: examples of planning casework handled by my office](#)

#### My role

As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction, which essentially includes all organisations that deliver public services devolved to Wales. These include:

- local government (both county and community councils)
- the National Health Service (including GPs and dentists)
- registered social landlords (housing associations)
- the Welsh Government, together with its sponsored bodies.

I am also able to consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of

privately funded healthcare.

### **Trends in my planning and building control casework**

Complaints I receive about planning and building control services constitute around a tenth of the complaints handled by my office overall – 9% in 2018/19.

In many of these cases local authorities have refused to deal with complaints about the planning process on the ground that they relate to “properly made decisions”.

Whilst applicants for planning permission may appeal to the Planning Inspectorate, other parties involved in the process are entitled to complain to the relevant local authority about the process it followed when taking any decision. The issue has been raised with Monitoring Officers across Wales in March 2019 to emphasise the point that local authorities cannot confidently say that the decision is a “properly made decision” without first reviewing its process and responding to any issues raised in a complaint.

My powers in relation to planning process are quite limited. Where a right of appeal is available to a complainant, I cannot generally investigate the complaint. Matters brought to me from applicants for planning permission do not therefore generally fall within my remit.<sup>1</sup> Also, I cannot question the merits of a planning decision unless there is evidence of maladministration. My investigations therefore focus on the procedural aspects of a local authority’s decision making. Even where I find evidence of significant maladministration which has adversely affected the amenity of a complainant, I do not have the power to overturn planning permission. My recommendations aim to secure actions on the part of the local authority to remedy, as far as possible, any injustice resulting from an authority’s administrative failures. I am not able to investigate complaints where there is no personal injustice to the complainant.

These limitations on the cases I can investigate mean that only a relatively small proportion of planning and building control complaints that reach my office is subject to full investigation. However, I would like to draw the attention of the Committee to a public interest report related to planning processes issued by my office in January this year. Whilst I will refer to my findings later in this paper, a summary of this report can

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<sup>1</sup> For instance, of the planning and building control cases closed in 2018/19, 49% were deemed to be out of jurisdiction.

be found in the [Annex](#).

### **Themes arising in my casework**

Since April 2016, approximately half of all the cases relating to planning and building control received by my office related to the handling of planning applications.

However, this subject amounted to 60% of my planning and building control casework in 2018/19, a significant increase from 45% and 46% in the previous years.

Other major themes raised by the complainants in 2018/19 included unauthorised development (approximately 13% on average) and building control (approximately 6% on average). I have not seen significant changes in the proportion of these cases over the recent years.

I can also point out several more specific themes recognised by my casework staff:

- Information and engagement

The Auditor General's report noted a concern over the quality of information provided by local planning authorities to the public and over the quality of engagement with stakeholders about planning proposals and their potential implications. My staff have noted concerns about insufficient or inconsistent notification of planning applications to affected properties, and about the clarity and transparency of specific arrangements in each planning authority.

The requirements in respect of routine planning applications allow the planning authority some discretion in how such applications are publicised, which means that it may be difficult at times to ascertain that a correct process has not been followed in such cases

See [201706403](#) below for illustration of this theme in my casework. In both that case, and a much earlier one (200601750), failings in the Council's publicity for applications resulted, at least in part, in my recommending that the Council pay the complainant for any diminution in the value of their property as assessed by an independent District Valuer, potentially a significant sum.

- Enforcement

The Auditor General's report commented on the perception by some members of the public that enforcement in cases of breaches of planning conditions is not as effective as it should be, with some expressing concerns that developers may be 'playing' the planning system. I certainly see in my casework complaints in relation to enforcement of conditions of planning applications which were subsequently not fully complied with by the applicant, and about failure to act on unauthorised developments. My role in complaints about a lack of enforcement is limited but my casework suggests that legitimate planning decisions on what it is expedient and appropriate to enforce, can reflect pressures on planning staff and the limited staff resources for enforcement.

See [201800027](#), [201801745](#) and [201705212](#) for illustration of this theme in my recent casework.

- Delay

The Auditor General's report also commented on the length of time it takes for applications to be approved and unacceptable delays. Few cases reaching my office concern a delay in the handling of planning applications. This process is governed by definite timescales and if these are breached the applicants have a right to appeal to the Planning Inspectorate. However, my staff are more commonly asked to consider alleged delay in enforcement in cases of breaches of planning control (e.g. unauthorised developments).

See [201903049](#), [201801745](#) and [201800027](#) below for illustration of this theme in my recent casework.

I would also like to draw attention of the Committee to my recent public interest report ([201900014](#)) on an investigation against Flintshire County Council. My investigation found that the Council failed to take timely and appropriate action to deal with complaints about a car wash which was causing Statutory Nuisances of noise and water/chemical spray and which was also in breach of planning control. In addition, I concluded that the Council did not give due regard to the rights of the individual affected under

Article 8 of the Human Rights Act to the quiet and peaceful enjoyment of his home when addressing the concerns raised.<sup>2</sup>

- The Code of Conduct for elected members in Wales

My role in investigating alleged breaches of the Code of Conduct for elected members in Wales is also of relevance. Where I find evidence of a failure to comply with the Code on the part of elected members in the planning process I may refer the matter for further consideration to either the Adjudication Panel for Wales or to the relevant local standards committee.

Examples of serious cases include a member being disqualified from holding office for 18 months for using their position as an elected member in the planning process for their own advantage in relation to land they owned. In another example, a member was suspended from office for 3 months for failing to declare a personal and prejudicial interest in a wind farm application, and withdraw from a meeting when the matter was discussed.

I wish to stress that cases of this nature are infrequent and evidence from my casework suggests that high ethical standards are adopted by elected members across Wales. However, on the very few occasions when my investigation is required, my role serves as an effective mechanism by which cases of misconduct may be dealt with in an open and transparent way to promote public confidence in the planning process in Wales.

### **Planning services and level of resourcing**

I am conscious that the Committee's main focus is on the impact of resourcing of planning authorities on delivering planning services. It is difficult for me to make a firm pronouncement on whether the themes arising in my casework can be connected to resource pressures on planning authorities, since these issues are not formally raised by the complainants who contact me or the bodies that I investigate.

However, in the interest of completeness I would like to point out some contributing factors noted in complaints:

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<sup>2</sup> It is not my function to make definitive findings about whether a public body has breached an individual's human rights. However, where I identify evidence of maladministration which has caused injustice, I may consider whether a person's human rights may have been engaged and comment on a public body's regard for them.

- delays in enforcement can be linked to staffing issues, with the roles of dedicated enforcement officers being increasingly absorbed into the remit of planning officers;
- especially in rural communities with small planning department, there can be suggestions or perceptions that planning officers may have, and be influenced by, friendship or family links with applicants.

My focus is to consider whether there has been maladministration and injustice in individual cases, rather than to undertake reviews of the planning function, so I have not directly investigated these matters. They do, however, reflect concerns of those who complain to my office about planning matters.



**Nick Bennett**

**Public Services Ombudsman for Wales**

**January 2020**

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## **Annex: examples of planning casework handled by my office**

### **Case number: 201800027 – report issued May 2018**

Mr Y complained that Pembrokeshire County Council (“the Council”) had failed to take enforcement action against a developer who had breached conditions of a planning application granted for a camp site for static and touring caravans. He also complained that the Council had failed to communicate with him and deal with his complaint under its complaints procedure. The Ombudsman found that there were apparent failings by it and contacted the Council. It agreed to the following as an early resolution to his complaint:

- Write a letter to Mr Y apologising for the delay in dealing with his complaint under its complaints procedure

- b) Provide him with a written response at stage 2 of its complaints procedure to include what actions it has taken to date.

This will be completed within 30 working days of the date of this letter and the Ombudsman is satisfied that this will resolve his complaint.

**Case number 201801745 – report issued in August 2018**

Mr X complained that the City and County of Swansea (“the Council”) had failed to take enforcement action against a restaurant which had not installed a ramp as per its planning application and about the length of time the Council had taken to respond to his concerns. Mr X made an enforcement enquiry to the Council in February 2018 and understood that a response would be provided within 12 weeks. Mr X subsequently complained and received a Stage 1 complaint response in June 2018. The Council explained to Mr X that enforcement investigations can take longer than 12 weeks. It did not offer an apology for the time taken, nor did it provide information to Mr X on how to escalate his complaint. The Council therefore agreed to complete the following actions:

- a) Apologise to Mr X for the length of time taken in investigating the enforcement enquiry
- b) Explain the reasons for the delay
- c) Provide information to Mr X on how to escalate his complaint to Stage 2 of its complaints procedure if he remained dissatisfied with its response.

The Council provided evidence that it had written to Mr X on 23 August 2018 and had complied with the actions outlined above.

**Case number: 201705212 – report issued in December 2018**

Mr A complained that, having granted conditional planning permission for a local housing development, the Local Planning Authority, failed to properly discharge the associated planning conditions, resulting in his property being subject to the risk of contamination and flood water. Mr A also complained that there was a failure to adequately respond to his complaint.

The investigation found that there had been missed opportunities to ensure that the planning conditions had been met or consider taking enforcement action. The

investigation also found that the Council had failed to fully respond to Mr A's complaint. The complaint was partly upheld.

The Ombudsman recommended that the Council apologise to Mr A for the failings identified in this report and arrange a meeting with the Land Drainage Authority, the Highways Authority, Dwr Cymru/Welsh Water and Natural Resources Wales to formulate an action plan to address the outstanding drainage works on the site, consider the environmental impact of the unattenuated flow of water and update Mr A on the outcome. The Ombudsman also recommended that, upon receipt of relevant evidence from Mr A, the Council refer Mr A's concerns about discharge leaking from the former landfill site to the Environmental Health Department for consideration and request that it undertake sampling from the stream, liaise with the water regulator and advise Mr A of the outcome of the investigations.

**Case number: 201706403 – report issued in January 2019**

Mrs B complained to Flintshire County Council ("the Council") about the way it handled an application to amend planning permission for a house to be built on the plot of land next to her house. Mrs B said that the amended plans resulted in significant changes to the proposed neighbouring property which have had a significant impact on her privacy and amenity.

The Ombudsman found that the consultation on the application was flawed as it failed to adequately describe the development or include site plans which would show the intention of the applicant to move the location of the house on the plot. The Ombudsman found that the Case Officer failed to adequately consider the impact that the relocation of the house would have on the amenity of Mrs B's property. The Ombudsman also found that the Council did not act in accordance with its Enforcement policy in respect of this case and that it failed to handle Mrs B's complaint properly.

Since the events, the Council has made a significant number of improvements to both its planning and enforcement processes. The Council agreed to apologise for the failings identified in the report, to engage the district valuer to assess the impact the relocation of House A had on the amenity of Mrs B's property and make a payment equivalent to the devaluation which resulted from this change and to meet with Mrs B to establish whether there are any outstanding enforcement matters.



**Case number: 201903049 – report issued in September 2019**

Mr X complained that Flintshire County Council failed to take enforcement action against a neighbouring property. Mr X also complained that Flintshire County Council provided him with incorrect information in a stage 2 complaint response issued to him.

The Ombudsman found that the Council had failed to provide Mr X with a fixed timescale as to when enforcement action against his neighbouring property would be commenced. Additionally, The Ombudsman found that the Council had given Mr X incorrect information in their stage 2 complaint response and had failed to provide him with an accurate and comprehensive update in regard to his complaint.

The Ombudsman contacted the Council and it agreed to:

- a) Provide Mr X with a written apology for the incorrect information provided to him in their stage 2 complaint response.
- b) Provide Mr X with a full, accurate and comprehensive update regarding his complaint.
- c) Complete the preparatory work for enforcement action and issue it, if necessary, within an agreed timescale.

The Ombudsman was satisfied that this would provide a resolution to the issues considered in this complaint.

**Case Number: 201900014 – Report issued on 9 January 2020**

A Landlord complained that, between 2014 and 2019, Flintshire County Council failed to take timely and appropriate action to deal with a car wash which was causing Statutory Nuisances of noise and water/chemical spray affecting the Landlord's tenant, Mr R and which was also in breach of planning control. The Landlord also complained that the Council failed to investigate and respond to its complaint appropriately and in line with its Corporate Complaints Policy.

The Ombudsman found that despite identifying in 2014 that the car wash was causing a Statutory Nuisance, the Council did not open an appropriate case file until 18 months later and did not serve an Abatement Notice for a further 13 months. When the car wash continued to operate and cause the Statutory Nuisance, contravening the Abatement Notice, the Council took no further action. Consequently, Mr R had to endure significant persistent, disruptive and intrusive noise levels and water spray for a number of years. This was a significant injustice to the tenant and also to the

Landlord, in view of the Landlord's obligations to its tenant and his right, under Article 8 of the Human Rights Act 1998, to the quiet and peaceful enjoyment of his home.

The Ombudsman found that the Council was aware from at least 2012 that the car wash did not have appropriate planning consent but it had almost no planning records from before August 2018. There were also failures in inter-departmental communication and co-operation. The lack of records coupled with the Council's inaction over the 5 years preceding August 2018 suggested that it did not fully consider whether to take enforcement action against the car wash and amounted to maladministration. Consequently, the Council could not explain the reasons behind its actions (and inaction) and moreover, it was impossible for the complaint to be dealt with fully and the history of the case in the Planning Department to be examined and evaluated.

The Ombudsman also found that the Council failed to respond to the Landlord's complaints appropriately and escalate them when it asked for assistance to raise a formal complaint. There was also an absence of clearly established ownership at senior levels in the Council, compounded by the length of time that the failures continued and a lack of regard for the difficulties being faced by Mr R. Consequently, there was no appropriate investigation of the complaint and the Landlord received no meaningful response to its concerns.

The Council agreed that, within one month of the Ombudsman's report, it would:

- a) Remind relevant staff at all levels within the Council of the importance of dealing with correspondence appropriately, including signposting individuals who want to raise a formal complaint to the Corporate Complaints Team
- b) Offer a meaningful apology, in writing, to the Landlord along with £1000 financial redress in recognition of the failings in complaints handling, and the Landlord's time and trouble pursuing the complaint for at least 5 years
- c) Offer a meaningful apology, in writing, to Mr R, along with £2,500 financial redress for the failure to deal with the Statutory Nuisances and in recognition of the persistent and prolonged exposure of Mr R to unacceptable levels of noise and water spray for at least 5 years.

In January 2019 the Council reviewed and updated its policy on Planning Enforcement. The Council also agreed that, within 3 months of the Ombudsman's report, it would:

- a) Share this report and its findings with relevant staff in the Planning, Environment and Legal Departments as well as with the Leader of the Council, the Cabinet Member for Planning and Public Protection, the Planning and Development Control Committee and the Environment Overview and Scrutiny Committee
- b) Establish what powers remain available to it to resolve the issues and ensure that it fully exercises those powers as appropriate to achieve an ultimate resolution
- c) Review its Public Protection Service Enforcement Policy, to ensure that it remains relevant, effective and compliant with Welsh Government guidelines, legislation and best practice, with particular reference to Statutory Nuisances
- d) Develop formal procedural arrangements for co-operation between departments to improve the efficacy and efficiency of inter-departmental collaboration, with an emphasis on Planning, Legal and Environmental Health
- e) Review the Complaints Policy to ensure it is clear who should have overall responsibility for investigating and responding to complaints, particularly where the matters concern different departments in the Council
- f) Reflect on how the consideration of human rights can be embedded into its practice when deciding whether to take enforcement action, with particular reference to planning control and investigations into Statutory Nuisances
- g) Review its internal communication and escalation channels to ensure that staff can raise concerns during their day-to-day work which can then be managed constructively, to encourage ownership and accountability whilst discouraging a "blame culture".