

# Professional Practice and Maladministration

## RTPI Practice Advice Note 7

### 1. Introduction

This PAN was published in 1989. There have been changes in legislation and best practice in the intervening years, especially in relation to consultation processes. However the principle of the planner to look at the situation from the position of the complainant remains good advice today.

A section containing [sources of further information](#) is available at the end of this note.

The Commission for Local Administration – the local government 'Ombudsman' receives a significant number of complaints on planning matters. The Institute has therefore prepared this Advice Note, to help practising planners avoid allegations of maladministration being levelled at them or their employers. In addition to this Advice Note, members are reminded that the Institute also provides guidance on other related matters, for example, development control (in PAN No.1) and relationships with the architectural profession (RTPI/RIBA joint policy statement April 1980). This note relates to practice in England and Wales. There are a number of legislative differences in the system in Scotland, but they do not affect the tenor of the advice in this Note.

### 2. Scope of consideration by the Ombudsman

The usual reason for a complaint is a contentious proposal, the handling of which causes grievance either to the applicant, who feels he or she is being unfairly treated or obstructed, or a neighbour, who objects to the proposal. The way in which a planner arrives at his planning advice is within the scope of the Ombudsman, but maladministration will not be found if the advice has been properly and reasonably given. In the handling of contentious cases, practice and procedures are likely to be particularly subject to scrutiny.

### 3. Fair to applicants and objectors

The essence of the Institute's advice is: try to look at the task of commenting upon planning applications from the standpoint of the potentially frustrated applicant and the would-be objector. The applicant is entitled to planning permission unless good reason can be shown why not, but this principle is not always apparent in the handling of some applications.

While the legal rights of objectors are limited, a customary practice of consultation on planning applications has emerged, encouraged by the Institute and successive governments, and this practice is now looked for by the Ombudsman. It is also worth noting that the High Court has quashed a grant of planning permission on the grounds that where an authority's practice has created an expectation that decisions will not be taken until neighbours have been notified and/or given a chance to object, and that such objections will be duly considered, it will be a breach of natural justice to frustrate these expectations. (R v Torfaen Borough Council [Monmouth District Council] 1986 (JPEL page 686)). In the view of the Institute, "it is of the greatest importance that planning authorities undertake their duties in a manner which can be seen to be fair to both applicants and objectors".

#### **4. Complaints procedure**

An exercise in identifying the problems which both applicant and objector might face is instructive in guiding the planning authority on its processes and the opportunities it affords people to comment and to obtain advice. Many complaints arise out of anger and frustration felt by members of the public who consider either they are being ignored or cannot get through to senior responsible officers. If officers were to place themselves in the position of members of the public trying to lodge a complaint or pose a question, they would quickly see the need for simple and responsive practices in their offices. It is helpful to have a clearly stated complaints procedure.

#### **5. Specific advice**

There is some specific advice which the Institute commends to its members, in the light of the general approach just described.

First, pay heed to the specific conclusions of the Ombudsman as they emerge from individual cases. There are numerous failings in office practice; therefore, avoid delays, reply to letters promptly; keep records of phone calls; follow statutory procedures efficiently; take accurate minutes of all meetings, including site meetings and ensure that office routines are satisfactory at all times. The implied criticisms are obvious and avoidable by trained officers without over elaboration. Where staff or other resources are insufficient, this inadequacy should be dealt with or, at least, made known to the employing authority.

When dealing with planning applications or other planning proposals which affect people, the planning officer should advise the authority that importance should be attached to local consultation, over and above the legal minimum. Planning officers should recommend that their authorities have a definite policy for local consultation. The policy should be agreed by Committee and cover matters such as types of application to be advertised locally, the means and extent of such advertising and procedures for impartial consultation.

A local planning authority may seek to avoid charges of maladministration by not adopting any policy for neighbour notification, leaving the Planning Officer to decide in individual cases. The Institute does not recommend this approach as, where an authority has not adopted a policy, there is no less a duty upon the

Planning Officer to be fair and consistent in approach. Indeed the Ombudsman has found maladministration in cases where there was no policy to consult but where a citizen was seriously affected by an application and was not consulted. If an authority is approached by an objector or supporter to a proposal, the individual's views should be considered, although the authority should give adequate opportunity for expression of views by both sides.

Local planning authorities are often criticised for choosing not to notify certain parties of a particular application. The Institute considers that this should not be seen as a justification for excessive notification. In considering procedures for consultation, authorities should also decide whether and in what circumstances an interested party should be offered a second opportunity to comment, for example, on receipt of amended plans.

Applications for deemed planning consent by the Planning Officer's own authority should be treated in the same way as private applications. The Planning Officer might be confronted with a controversial scheme from a service department supported by a committee of the Council. In such cases it will be doubly necessary for the Planning Officer in reporting to the Planning Committee to stress the need to deal even-handedly with the various representations received. Some local authorities specify types of applications for deemed consent which should be subject to public consultation. In the Institute's view, there should be no less public participation on local authority development than on private development, and it must be established that any adverse views will be given their due attention, as with private applications; otherwise it could easily appear that double standards were being employed. If an authority or service committee has a rolling programme of land acquisition for various purposes, this must not be allowed to prejudge specific planning applications on the individual sites. The public tend to be suspicious of circumstances where a local authority grants itself permission. Early and wide consultations are a good way of protecting the authority from allegations of malpractice. In reporting to Committee, as with all planning applications, it will usually be necessary to refer to relevant provisions in structure and local plans. Reference should also be made to the likely impact of the proposal on the enjoyment of neighbouring properties and sometimes on properties further away which may, for example, be affected by increased traffic.

Do not depart from established procedures for consultation and processing of applications, except by express decision of the authority. If an authority has established various consultative procedures, the Ombudsman will expect these to be followed, even if they might not be legal requirements. However, if it appears in a particular case that a variation from usual practice is advisable, this departure should not act to the disadvantage of either applicant or possible objector, and the decision to vary procedure should be a formal and explicit act of the appropriate committee or delegated officer.

Advise elected members by presenting all relevant material - no more, no less – and gauge this by trying to put yourself in their position in attempting to make planning decisions. An officer must not withhold relevant facts in anticipation of their being unpalatable to elected members, no overload them with long reports which obscure or confuse the essentials. It is important that all objections to

applications are set out in writing. In stating reasons for planning recommendations, whether these be reasons for the imposition of conditions, or refusal of permission, state them clearly avoiding the use of planning clichés that are too vague to mean anything to elected members or applicants.

The prime duty is to deal with planning proposals strictly on their merits, taking into account the weight and substance of argument rather than the source and number of representations for or against.

In dealing with the public, officers must distinguish their role as advisers to the authority from any personal involvement they might have within the locality – whether as an interested resident, a member of a community group or other body. Likewise, the officer should advise elected members and the authority to be similarly clear not to confuse responsibilities in dealing with planning proposals. If officers have any interest in a proposal, whether pecuniary or non pecuniary, they should not be involved in the handling of the case.

Problems sometimes arise when different departments or sections of one department within a local authority are dealing with the same proposals, for example, both for building control and planning purposes. Procedures should be introduced to avoid the decisions of one department appearing to conflict with those of another. If possible the two groups of staff should liaise on a particular scheme. If this cannot be ensured, applicants should be clearly advised that a particular decision is limited to, for example, a planning application and not to an application for any other purpose.

## **6. Checking applications for gross error**

A particular problem was highlighted by a case in a Midland authority in 1979/80 in respect of the granting of a permission on the basis of a submitted plan which was in error. It is accepted by all that the applicant has primary responsibility for producing accurate plans. A local planning authority may require the submission of further information if it is not satisfied with that already supplied. If submitted plans are not satisfactory, in that there is uncertainty as to the positions of buildings or structures in relation to existing properties and boundaries, it is reasonable to refer them back to the applicant.

## **7. Amendments**

Where amendments are made to submitted plans it is important to ensure that the applicant either provides an amended set of plans or initials any modifications to previous plans. It may be necessary to advise interested parties to the receipt of amended plans. Reference to the amended plans should always be included in the decision notices in order to prevent subsequent confusion.

## **8. Test of an error**

Whilst the Ombudsman does not specify what the competent planning officer should do, it would be expected that he or she would recognise obvious gross errors in any submitted plans. In determining whether there has been maladministration, the Ombudsman will decide what they consider to be obvious

and gross in the light of the particular circumstances of the case. This does not mean that every error which an aggrieved neighbour might consider could affect their interest will be expected to be identified. A test might be whether the error is such that it could have resulted in a different decision by the authority.

## 9. Advice

Although the applicant should be left in no doubt that the accuracy of their plans is their responsibility, Planning Committees should not, in arriving at their decisions and being advised by their officers, reach conclusions on an erroneous basis. This applies both to plans and to other aspects of applications. The problem is to decide how far to go in checking plans.

The following advice is offered as a means of containing this problem within the staff resources available to departments. The Institute recognises that much of the work of development control is carried out by staff who are not Chartered Town Planners. Nevertheless, where members direct non-chartered development control staff they are urged to pay regard to the advice on this Note.

On receipt of applications and for registration and plotting when identifying boundaries of applications, refer to the latest possible Ordnance Survey (OS) bases and establish whether this sheet is reasonably up-to-date. If it is not it will be necessary to refer to planning permissions, other relevant records or to establish on the site new development relevant to the application. Reference should also be made to revisions available via the Ordnance Survey: namely, the SUSI (Supply of Unpublished Survey Information) and SIM (Survey Information on Microfilm Services).

Having identified applications as accurately as possible, neighbouring properties which might be affected by the development should be identified. A commended practice adopted in many planning authorities is to have set rules for identification of such properties, so that they can be sent consultation letters. Adjacent property can include land enjoying planning permission for development, which has not yet been commenced.

It is also desirable to require reliable reference points on submitted plans, which can be used for building and planning control purposes at the actual development stage. For housing estates, where minor cumulative errors might not otherwise come to light until too late, this practice could be especially beneficial.

The case officer should note any particularly close physical relationship between the proposed development and adjacent property so that the effect of this can be checked on the site visit.

If there appear to be errors in the plans, officers should assess the seriousness of these prior to making a recommendation to elected members. For householder applications, officers should try to resolve the problem themselves. For larger and commercial/industrial developments, where professional advisers are employed and where the error is felt to be serious, reference back to the applicant would be the best course. Resolution of the problem could entail detailed field survey by the applicants' advisers. An officer might decide to take selective measurements of

certain important distances (e.g. window to window) or of the positioning of boundary point and lines. Although these, as with an overall survey, would not be usual practice they may well be the most effective way of providing an objective basis for control and consultation. If coupled with normal site inspection duties, such tasks need not be onerous.

Ultimately the purpose of the technical preparation and appraisal carried out by departments is to enable sound recommendations to be put to Planning Committees (or to an officer with delegated authority). In cases where an application has certain deficiencies in its plans, but these are considered by the Planning Officer to be of a minor nature, there would be no need for reference back to the applicant for further details. In the absence of objections from neighbours who have been directly consulted, this may well suffice. In such circumstances the plans could, as a matter of record, be appropriately annotated to record both the error and the assessment that it had no bearing upon the decision. In controversial or sensitive cases, this point could be made to the Planning Committee or to the officer determining the application.

## 10. Conclusions

Finally the Institute wishes to advise its members not to be defensive and ultra-cautious in practising their profession, merely because of the threat of an accusation of maladministration. It is not best practice to say and do the minimum, therefore, the Institute would not wish its members to play safe on consultation merely by sticking to the letter of the law. Nor would this be within the spirit that the Ombudsman operates. The Institute encourages members to continue to be as helpful as possible to both applicants and members of the public.

## 11. Sources of further information

RTPI Code of Professional Conduct [www.rtpi.org.uk/about-the-rtpi/codecond.pdf](http://www.rtpi.org.uk/about-the-rtpi/codecond.pdf)

Complaints Procedures: Procedures for Investigating Complaints against Members and for Taking Disciplinary Action  
[www.rtpi.org.uk/resources/publications/complain.pdf](http://www.rtpi.org.uk/resources/publications/complain.pdf)

Advice on employment law and guidance on professional conduct is available to members as part of Planners in the workplace [piwp@rtpi.org.uk](mailto:piwp@rtpi.org.uk)

British and Irish Ombudsman Association [www.bioa.org.uk/list.php?navletter=R](http://www.bioa.org.uk/list.php?navletter=R)

England [www.lgo.org.uk/](http://www.lgo.org.uk/)

Scotland [www.spsso.org.uk/](http://www.spsso.org.uk/)

Wales [www.ombudsman-wales.org.uk/](http://www.ombudsman-wales.org.uk/)

N Ireland [www.ni-ombudsman.org.uk/](http://www.ni-ombudsman.org.uk/)

Rep Ireland <http://ombudsman.gov.ie/en/>

LGO has good practice guidance on: running a complaints system, good administrative practice and remedies at [www.lgo.org.uk/guidance.htm](http://www.lgo.org.uk/guidance.htm)

Positive Engagement: A Guide for Planning Councillors

[www.pas.gov.uk/pas/aio/11665](http://www.pas.gov.uk/pas/aio/11665)

This guidance is written for chartered town planners working in England and Wales. Whilst there are legislative differences in Scotland and Ireland it does not alter the tenor of this document.



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