



Northern Ireland

Public Services

Ombudsman

Investigation Report

Investigation of a complaint against Derry City and Strabane District Council

NIPSO Reference: 17101

The Northern Ireland Public Services Ombudsman

33 Wellington Place

BELFAST

BT1 6HN

Tel: 028 9023 3821

Email: nipso@nipso.org.uk

Web: www.nipso.org.uk



@NIPSO_Comms

Publication date: April 2018

The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities. She may also investigate and report on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Where the Ombudsman finds maladministration or questions the merits of a decision taken in consequence of the exercise of professional judgment she must also consider whether this has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. The Ombudsman may recommend a remedy where she finds injustice as a consequence of the failings identified in her report.

The Ombudsman has discretion to determine the procedure for investigating a complaint to her Office.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

TABLE OF CONTENTS

Page

EXECUTIVE SUMMARY	1
THE COMPLAINT	3
INVESTIGATION METHODOLOGY	3
MY INVESTIGATION	6
Issue 1 – Whether the application was processed by the Council in the appropriate manner from June to September 2015	6
Issue 2 - Whether the Council handled the applicant’s complaint appropriately	19
CONCLUSION	23
APPENDICES	26
Appendix 1 – The Principles of Good Administration	
Appendix 2 – The Principles of Good Complaints Handling	

EXECUTIVE SUMMARY

Issues of Complaint

I accepted the following issues of complaint for investigation:

- Whether an application for a wind turbine was processed in an appropriate manner by Derry City & Strabane District Council from June to September 2015
- Whether the Council handled the applicant's complaint appropriately

Findings and Conclusion

The investigation of the complaint identified maladministration in respect of the following matters:

- The Council's failure to process the application in an appropriate manner
- The Council's failure to give adequate reasons for its decision and to maintain records of its consideration identified in this report
- The provision of misleading and inaccurate information by the Council
- The Council's failure to acknowledge and apologise for its errors

I am satisfied the maladministration identified caused the applicant to experience the injustice of uncertainty, frustration, raised expectations, loss of opportunity, and time in trouble in pursuing the complaint to my office.

Recommendations for Remedy

Having considered the nature and extent of the injustice sustained by the applicant in consequence of the maladministration identified in this report, I recommended the following remedies:

- The Council should apologise for the failings identified in this report in

accordance with my guidance on apology.

- The applicant should receive a payment of £1000 by way of a solatium for the injustice of uncertainty, frustration and loss of opportunity.

Although the applicant lost the opportunity to apply for the NIRO scheme in consequence of the Council's maladministration, I am unable to conclude that his application would have been successful.

I recommended that the Council provide the apology and the solatium within one month of the date of my final report.

In order to improve the Council's delivery of the planning function, I also recommended that:

- The Council's Planning officers should be reminded of the need to make contemporaneous records of all group discussions and decisions. The Council should amend the Planning Protocol to reflect this requirement. The Council's Planning staff should have training in good record keeping.
- The learning points outlined in my report should be communicated to all relevant Council staff.

I recommended that the Council should draw up an action plan to incorporate these recommendations and should provide me with an update within six months of the date of my final report. This action plan should be supported by evidence to confirm that appropriate action has been taken.

THE COMPLAINT

1. The applicant complained about the actions of Derry City & Strabane District Council (the Council) in relation to the processing of his planning application for a wind turbine in Artigarvan, County Tyrone. In July 2014 an agent acting on behalf of the applicant submitted a planning application (Application 213) to the Department of the Environment (DOE) seeking permission to install one wind turbine. The agent also made two additional applications for wind turbines on behalf of the applicant's neighbour (Applications 214 and 216).
2. On 1 April 2015 planning powers were transferred to local government pursuant to the provisions of the Local Government Act (Northern Ireland) 2014. The Council then became the authority responsible for Application 213. The applicant's complaint concerns the Council's processing of this application. He also complained about the Council's handling of his complaint.

Issues of complaint

3. The issues of complaint which I accepted for investigation were:

Issue 1: Whether the application was processed by the Council in the appropriate manner from June to September 2015.

Issue 2: Whether the Council handled the applicant's complaint appropriately.

INVESTIGATION METHODOLOGY

4. In order to investigate the complaint the Investigating Officer obtained from the Council all relevant documentation together with the Council's comments on the issues raised by the applicant. This documentation included information relating to the Council's handling of the complaint. The Investigating Officer also interviewed three members of Council staff as part of the investigation.

5. The applicant completed a complaint form to my office online which outlined his issues of complaint. He also submitted copies of his complaint correspondence with the Council. He advised that his complaint concerned the Council's processing of his application for approval of a wind turbine (Application 213) during the period June 2015 to September 2015. My investigation has therefore focused on the actions of the Council during this period. In particular, he complained that he had been advised that he would be granted permission for the installation of the wind turbine and this had not occurred. He complains that the Council has *'misled, lied and ignored vital pieces of evidence'*.

Relevant Standards

6. In order to investigate complaints I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case.
7. The general standards are the Ombudsman's Principles¹:
 - The Principles of Good Administration
 - The Principles of Good Complaints Handling

These are set out in full in the Appendices to this report.

8. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of the Council and Council staff, whose actions are the subject of this complaint.
9. The specific standards relevant to the planning application are as follows:
 - The Renewables Obligation (Northern Ireland) Order 2009 (as amended).
 - The Renewable Obligation Closure (No.2) Order (Northern Ireland) 2016 (The Closure Order)

¹ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- The Department of Enterprise, Trade and Investment (DETI) Guidance Note on the Northern Ireland Renewables Obligations (The Guidance Note)
- The Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015 (The Local Government Indicators)
- Ofgem Renewable Obligations: Guidance for Generators 1 May 2013 (The Ofgem Guidance)
- Ofgem Renewable Obligations Essential Guide - confirming commissioning of generating stations (The Ofgem Essential Guide)
- Derry City and Strabane District Council Scheme of Delegation May 2015 (The Scheme of Delegation)
- Derry City and Strabane District Council Protocol for Operation of Planning Committee (The Council Protocol)
- Planning Policy Statement 18 'Renewable Energy' August 2009 (PPS 18)
- Derry City & Strabane District Council Feedback and Complaints Policy 1 April 2015 (The Complaints Policy)
- Derry City & Strabane District Council Customer Service Charter (The Customer Service Charter)
- Department of the Environment Development Management Practice Note 15 – Councils Schemes of Delegation April 2015 (Practice Note 15).

10. My role in planning complaints relates to an examination of the administrative actions of the Council. I am unable to challenge the merits of a discretionary decision, such as a planning decision based on professional judgment, unless it is attended by maladministration.

11. I have not included all of the information obtained in the course of the investigation in this report. However, I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings. The complainant and the Council were both given the opportunity to see and comment on a draft of this report before the final version was issued.

MY INVESTIGATION

Issue 1: Whether the application was processed by the Council in the appropriate manner from June to September 2015

12. The applicant stated that he intended to apply for a subsidy to install a wind turbine through the Northern Ireland Renewable Obligation scheme (the NIRO scheme) but he required planning approval for the wind turbine before he could proceed. He believes that the deadline for applying for this scheme was 30 September 2015.
13. He stated that his agent received confirmation from the Council by email on 25 June 2015 and 10 September 2015 that Application 213 would be approved and Council would be issuing the decision notice.
14. He complained that the Council failed to issue planning approval prior to 30 September 2015 and as a result he could not apply for the NIRO scheme. He said that there was no justifiable reason for delaying the issuing of planning approval from June to September 2015.
15. The applicant stated that his agent made the Council aware of the deadline for applying for the scheme. He also stated that he intended to go off grid with the electricity supply he received from the turbine.
16. The NIRO scheme was the main support mechanism for encouraging increased renewable electricity generation in Northern Ireland. It is provided for under the Renewables Obligation (Northern Ireland) Order 2009.
17. The guidance note issued by DETI² describes the NIRO scheme as its '*main policy instrument for incentivising renewable electricity generation*'. It describes the NIRO scheme in the following way:

² DETI and the Department of Employment and Learning (DEL) were brought together and re-named the Department for the Economy (DfE) in 2016.

'The [NIRO scheme] places a legal requirement on all Northern Ireland licensed electricity suppliers, from 1 April 2005, to provide Ofgem...with evidence that a specified quantity of the electricity supplied to final consumers can be accounted for by generation from renewable sources.'

18. The guidance also states at paragraph three that:

'Evidence of compliance with [the NIRO scheme] is in the form of Northern Ireland Renewable Obligations Certificates (ROCs) which are issued free of charge by Ofgem to electricity generators.'

19. The guidance further states that:

'Generators who want to receive support under [the NIRO scheme] in order to obtain ROCs must first seek accreditation from Ofgem. Once accredited, generators are issued with ROCs for every [megawatthour] of eligible electricity generated...generators can then sell these ROCs directly to electricity suppliers.'

20. I have reviewed the Ofgem Guidance. It explains that *'generating stations that want to receive ROCs need to be accredited by us as a generating station capable of generating electricity from eligible renewable sources.'*

21. The Ofgem Guidance states that the NIRO scheme *'allows a person who proposes to construct or operate a generating station to apply for preliminary accreditation.'*³ That guidance states that:

'There are a number of requirements in applying for preliminary accreditation, including that relevant planning consent to build the generating station has been obtained. These requirements are that: consent under Section 36 of the Electricity Act 1989 or article 39 of the Electricity (Northern Ireland) Order 1992, or

³ Ofgem states that preliminary accreditation applications are for 'proposed generating stations that are more than two months away from commissioning.'

planning permission under the Town and Country Planning Act 1990, the Town and Country Planning (Scotland) Act 1997, or the Planning (Northern Ireland) Order 1991 (as appropriate)

has been granted in respect of the generating station in question.'

22. The Ofgem Guidance states that *'Where preliminary accreditation has not been sought or granted, to become accredited under the [NIRO Scheme], the operator of the generating station (or in some cases the generator's appointed agent) must submit an application for accreditation to us. The application must relate to the entire generating station that is to be accredited. For newly built generating stations, this should be done either at or just prior to the generating station being commissioned⁴. We will not process applications received more than two months before the date on which the generating station is commissioned.'*

23. I have reviewed the Ofgem Renewable Obligations Essential Guide which states that *'As the applicant you must produce documentary evidence that demonstrates the generating station has been commissioned.'*

24. The Renewables (No 2) Closure Order (Northern Ireland) 2016 (the Closure Order) closed the NIRO scheme for applications in respect of *'small onshore wind generating stations'* from 1 July 2016.

25. In response to investigation enquiries in relation to the closure of the NIRO scheme, the Department for the Economy (the DfE) confirmed:

'The closure date to avail of the scheme was 30 June 2016. However an applicant could apply for a grace period to gain accreditation after 30 June 2016, but only if the applicant met the following conditions:

Relevant planning permission dated no later than 30 September 2015;

⁴ The Ofgem Essential Guide provides the following definition of this term: "commissioned", in relation to a generating station, means the completion of such procedures and tests in relation to that station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that that generating station is capable of commercial operation.'

A grid connection and acceptance of that offer, both dated no later than 30 September 2015 or confirmation that no grid connection is required; and,

A declaration confirming that, as at 30 September 2015 the developer or proposed operator of the station owns the land on which the station is to be situated or has an option or agreement to lease the land or is party to an exclusivity agreement in relation to the land.'

26. The DfE also stated that an applicant could apply for accreditation if planning permission was approved after 30 September 2015 but the applicant would not have been eligible for a grace period. The accreditation lasts for twenty years, or until 2037; whichever comes first.
27. The DfE further stated that whether an applicant could have met the 30 June 2016 deadline would have depended on the specific circumstances of the application.
28. The Local Government Act (Northern Ireland) 2014 permits a Council Committee to delegate any matter to an officer of the Council. The Council's Scheme of Delegation for the determination of planning applications was determined by the Council on 21 January 2015. The Scheme Of Delegation allows the *'the Head of Planning within the Council and those Senior Officers appointed by this Officer...to determine all local development applications...whether for approval or refusal'*, apart from named exceptions.
29. I note that the exceptions include *'applications which the Chair or Planning Committee Councillors considers should be referred to Committee for determination – a sound planning reason must be given for such a referral.'* There is further exception for *'applications which the Head of Planning considers that the proposal merits consideration by the Committee'*.
30. The Council has established a protocol for the operation of its Planning Committee. I have reviewed the Council's Protocol which at section 4 states:

'The Scheme of Delegation approved in February 2015 at Shadow Planning Committee includes a procedure which allows for Planning Committee members, the Chair and Head of Planning to request that the Planning Committee considers an application rather than it be delegated. Members of the public will not be able to directly request this procedure.'

'Any referral must be based on clearly specified planning grounds to ensure efficient management of the Planning Committee.'

'Head of Planning and Chair shall consider the merits of such requests, determining whether planning grounds have been presented and the potential impact that such requests would have on the efficient operation of the Planning Committee.'

31. The former Department of the Environment in April 2015 issued a Practice Note (15) on Development Management for Councils in relation to schemes of delegation⁵. This practice note has not been replaced and was applicable at the time the application was being considered. I have reviewed Practice Note 15. It states at paragraph 7 that *'Where an application has been delegated, a case officer should consider the proposal and present a report to the officer appointed under the Scheme of Delegation to determine the application.'*
32. The former Department of the Environment issued planning policy guidance on renewable energy (PPS 18⁶) I have reviewed PPS 18. I note that Policy RE 1 within PPS 18 states that applications for wind turbines will be required to demonstrate that *'the development has taken into consideration the cumulative impact of existing wind turbines, those which have permissions and those that are currently the subject of valid but undetermined applications.'*
33. The Council has published a general Customer Service Charter (the Charter) which sets out its customer service delivery commitments and the standards of

⁵ https://www.planningni.gov.uk/index/advice/practice-notes/dm_practice_note_15_sod_complete.pdf

⁶ https://www.planningni.gov.uk/index/policy/planning_statements_and_supplementary_planning_guidance/planning_policy_statement_18_renewable_energy.pdf

customer service the public can expect. I have reviewed the content of the Charter. I note that the aim of the Council is to *'provide quality, accessible and value for money services'*. I also note that the Charter states that the Council will at all times *'Treat you fairly and with respect'*.

34. The Local Government (Performance Indicators and Standards) Order 2015 sets standards. I have reviewed the content of The Local Government Indicators. I note that Schedule 4 of the Order documents Planning Standard 2 which states that *'Local applications⁷ processed from date valid to decision or withdrawal within an average of 15 weeks.'*

The Council's response to investigation enquiries

35. In response to investigation enquiries in relation to Application 213, the Council provided a summary of the decision making process for a delegated application. It stated that during the process the *'case officer discusses file with senior officer'*. Following this discussion *'if all agreed report is signed and decision notice produced and signed by authorised officer.'*
36. The Council acknowledged that the applicant's agent was advised that the decision to approve Application 213 would be issued.
37. However, the Council stated that the agent is *'aware of the corporate decision making process, whereby individual case officer's recommendation is not a Council decision.'* The Council also stated that the agent is *'familiar with the Council's Protocol for the Operation of the Planning Committee and the Delegated Scheme, both of which refer to the procedures for applications being referred into the Planning Committee at any stage'*. Further the Council confirmed its view that *'The application was complex and contentious and council wanted to ensure the correct decision was made.'*
38. I note that on 25 June 2015 an *'initial view'* was given to the agent that Application 213 was acceptable. The Council stated that: *'As part of the*

⁷ The Local Government indicators define local applications as 'an application in the category of local development within the meaning of the Planning (Development Management) Regulations (Northern Ireland) 2015, and any application for consent or approval under the Planning Act (NI) 2011 (or under any orders or regulations made under that Act).'

assessment into the application, it was also necessary to consider the cumulative impact’ of Applications 214 and 216.

39. The Council has accepted in response to the investigation that there were *‘unsatisfactory delays in dealing with the processing of his application’* and has apologised for these delays. It has stated that it *‘did not intentionally delay issuing the decision notice’* and that the referral to bring the applications to the Planning Committee was *‘based on clearly specified planning grounds.’*
40. It is clear from the Council’s response that the Council was aware of the NIRO scheme *‘in general terms’* because the agent had referred to the NIRO scheme when Application 213 was submitted in 31 July 2014. However, the Council clarified that the agent did not mention the NIRO scheme to the Council until 10 November 2015 and stated: *‘The decision to cease the subsidy was a matter for central government DETI and Council had no prior knowledge of this issue’*.
41. The applicant complained to the Head of Planning on 16 March 2016 about the failure to deal with Application 213 in a professional and efficient manner. In that letter, he posed eight discrete questions about the processing of his application. The Council responded on 20 April 2016. I have reviewed the Council’s response. In its response, the Council referred to the email of 25 June when the Case Officer, following discussion with the Principal Planning Officer (PPO), informed the agent of their views on whether Applications 213, 214 and 216 were acceptable.
42. The Council also informed the applicant in this response that *‘Prior to issuing any of these decisions, the case officer would have had to write up a formal Case Officer Professional Planning Report for each one, bringing together the full consideration of the proposal, ...making the officer recommendation and then getting it agreed/counter-signed by the Senior or Principal Planning Officer.’*
43. The Council also referred to the email of 10 September 2015 from the PPO where she *‘went on to re-affirm the opinion to approve’* Application 213. The Council added that *‘this planning decision was not actually issued at that stage*

as per the stated intention of the officer – apparently partially due to significant workload and partially due to the ongoing non-decision on the other applications.’

44. The Council informed the applicant that it accepted *‘you may have been led to believe that planning permission would be granted imminently ... I apologise for the delays and for the lack of communication. However, it is clear from the file that all three applications were being negotiated/considered together.’*
45. The applicant remained dissatisfied and pursued his complaint to the second stage of the Council’s internal complaints procedure.
46. As part of the investigation process, interviews were conducted with relevant staff. In his interview, the Case Officer confirmed that he met the PPO on 25 June 2015 to discuss all three applications (213, 214, and 216). It was agreed at that meeting that Application 213 would be approved and also that Applications 214 and 216 would be refused.
47. The Case Officer stated that he intended to write up the report and obtain sign off on Application 213 from the authorising officer but due to his workload and annual leave this step was not completed. The Case Officer highlighted that he had a heavy workload at that time (thirty single turbine applications, thirty to forty complex applications) and he, together with planning staff, were getting used to the new processes in place since the transfer of the planning function to the Council.
48. The Case Officer stated that he held a further meeting with the PPO in September 2015 where they again agreed that permission for Application 213 was to be issued.
49. The Case Officer stated that following the September meeting with the PPO he still intended to issue the approval but there was again a delay in doing so due to his heavy workload. However, on 29 October 2015 the Case Officer was instructed by the Acting PPO not to proceed with approval for Application 213.

50. As part of the investigation the Principal Planning Officer was interviewed. The PPO stated that her role in relation to Application 213 was to oversee the decision making process.
51. The PPO confirmed that at the group discussion with the Case Officer on 25 June 2015 it was agreed that Application 213 was to be issued while Applications 214 and 216 were deemed not acceptable. The Case Officer informed the agent who was '*pressing for a view*' on the applications.
52. The PPO confirmed that the agent was informed by the Case Officer on 25 June 2015 that Application 213 would be issued. She advised that both she and the Case Officer intended to issue approval. She said that it was '*regrettable*' that this did not happen. She stated that it was reasonable for the agent to have expected it to have been issued. However, she pointed out that the agent would have known that the decision was not final until approval had been signed off and issued.
53. The PPO advised that Council correspondence with the agent from July to September 2015 in relation to Applications 214 and 216 was not the cause of the delay in issuing approval for Application 213. She believes that Application 213 was not issued during this period due to pressures of workload and staff taking leave over the summer period.
54. The PPO stated at interview that she met with the Case Officer for a further group discussion in September 2015 and that it was still her intention following this meeting that Application 213 was to be issued.
55. I note that the PPO went on leave in mid-September 2015.
56. As part of the investigation, the Acting PPO was interviewed. The Acting PPO confirmed that she took on this role when the PPO went on leave in mid-September 2015. She stated that prior to this date she had very little involvement in or knowledge of the processing of Application 213.

57. The Acting PPO advised that prior to Councillor A's email of 1 October 2015 it had been the intention of the Council to issue approval for Application 213, but approval had not yet been issued.
58. The Acting PPO recalled that during that period planning staff were very busy and various members of staff were off on leave. This was mainly due to annual leave over the summer months although some staff were absent for other reasons from August 2015 into 2016.
59. She stated that following the transfer of planning functions on 1 April 2015 the Council received over five hundred legacy cases from the former DOE and that staff workload was high. A significant number of these cases also had to be reviewed to ensure they had been processed according to Council policies that had recently been introduced. Staff also had to get used to new policies and procedures following the transferring of planning powers to the Council.
60. The Acting PPO confirmed that on 17 November 2015 she discussed the case with the chair of the Planning Committee as a result of Councillor A's email of 1 October 2015. She advised that it was '*probable*' during this meeting that consideration was given to the fact that an indication had been given to the applicant's agent that Application 213 would be approved.
61. The Acting PPO stated that she and the chair of the Planning Committee made a collective decision during this meeting that Application 213 would go to the Planning Committee for consideration. She explained that the decision was made on planning grounds, namely that consideration needed to be given to the cumulative visual impact of Applications 213, 214 and 216.

Analysis and Findings

62. I note the applicant's comments in relation to the emails sent by the Council to his agent on 25 June 2015 and 10 September 2015. I also note the Council's acknowledgement that his agent was advised that Application 213 would be issued.

63. I have examined the content of both emails. I am satisfied that communications with the agent and planning staff created a legitimate expectation that planning approval for Application 213 would be issued. In particular, I note the Case Officer's confirmation by email of 25 June 2015 that the application decision would be issued at the '*earliest opportunity*'. I consider it of significance in this case that the relevant planning officers had delegated authority to make this decision.
64. I note the content of Practice Note 15, which states that '*Where an application has been delegated, a case officer should consider the proposal and present a report to the officer appointed under the Scheme of Delegation to determine the application.*'
65. I have considered paragraph 7.1 of Practice Note 15 which states that the decision whether to approve a planning application is ultimately a matter for the Authorising Officer, in this case the PPO, who receives the planning report from the Case Officer, reviews the content of the report, and records his/her decision.
66. I consider that in this case the Case Officer and the PPO both communicated to the applicant's agent that a decision had been made on Application 213. This information was inaccurate as the decision had not yet been made, and on that basis the agent was provided with inaccurate information.
67. I find that the failure to provide the agent with accurate information fails to meet the standards set out in the Customer Service Charter. The first Principle of Good Administration requires bodies to 'Get it right'. A public body must provide effective services and act in accordance with its policies and guidance. The failure to provide accurate information did not meet the requirements of the First Principle. I also consider that this failure is contrary to the third Principle of Good Administration 'Being open and accountable' which requires a public body to ensure any information provided is accurate and complete.

68. I have carefully considered the issue of the Council's delay in issuing approval for Application 213. I note the comment of the Council to the applicant that the delay in issuing approval for Application 213 was partly due to '*ongoing non-decision*' on Applications 214 and 216 . I contrast this view with the information provided by Council staff when interviewed who were clear that this was not the cause of the delay. Staff have stated in response to interview questioning that the delay was due to the heavy workload of the Case Officer and leave taken by the Case Officer during this period.
69. I note there was contact between the agent and Council planning staff between July and September 2015 in relation to amending Applications 214 and 216. However, I cannot conclude that this caused the delay in Application 213 being reported on, approved and issued to the applicant.
70. On 25 June 2015 and 10 September 2015 the agent was given a clear undertaking that Application 213 would be approved and issued. I consider that no indication was provided to the agent that there would be a delay in issuing approval.
71. I acknowledge the increased workload of the planning officials during this period given the recent transfer of functions. However, I consider this ought to have been anticipated and planned for by the Council. The applicant experienced an unacceptable delay in the reporting on and issuing of planning approval for Application 213. I consider that this delay was caused by the failure of the Case Officer to prepare the planning report in a timely manner, and therefore the PPO was unable to review the report and sign off on the application in time.
72. I find that the failure of Council staff to report on and issue approval for Application 213 in a timely manner fails to meet the standards set out in the Customer Service Charter. I consider that this failure is contrary to the first Principle of Good Administration 'Getting it right' which requires a public body to provide effective services. I also find that this failure is contrary to the second

Principle of Good Administration 'Being customer focused' which requires a public body to keep to its commitments and deal with individuals promptly.

73. I wish to comment on the group discussions referred to in the Case Officer's email of 25 June 2015 and the PPO's email of 10 September 2015. I note that it was decided at these group discussions that Application 213 would be approved. I note that there were no contemporaneous records of these discussions.
74. The Third Principle of Good Administration requires public bodies to be 'Open and accountable'. This principle underscores the need for records of all decisions to be created and maintained. This is a key element of good administrative practice. To comply with this principle written records must be completed of all group discussions documenting attendees, the matters considered, decisions made and the reasons for the decisions including the weight given to relevant evidence. I find that in this case the absence of records has impeded my investigation into the decision to approve Application 213 at the group discussions.
75. I consider that the recording of group discussions on planning matters is an important element of good planning practice. Records can act as a 'shield' for a public body to defend its actions when challenged. I am satisfied that the failure to record discussions and decisions in this case is contrary to the third Principle of Good Administration 'Being open and accountable'. That principle requires a public body to give reasons for its decisions and keep proper and appropriate records.
76. I note the content of the file note made by the Acting PPO which recorded that she met with the Head of the Planning Committee on 17 November 2015 and decided that Applications 213, 214 and 216 would be removed from the delegated scheme and presented to the Planning Committee. I note the comments of the Acting PPO that this decision was taken '*on planning grounds*', yet the contemporaneous record does not contain details of the

discussions or considerations that took place. Neither is there a rationale for the decision made at this meeting.

77. I consider that the recording of such discussions is an important element of good administration. I find that the failure to record the detail of the discussions at this meeting is contrary to the third Principle of Good Administration 'Being open and accountable' which requires a public body to give reasons for decisions and keep proper and appropriate records.
78. **Finding: I consider that the failures identified above constitute maladministration. In this regard, I uphold this issue of the complaint.**
79. I have considered the content of the relevant guidance and legislation when considering the injustice suffered by the applicant in relation to this issue of complaint. As a consequence of the maladministration identified in this report, I am satisfied that he suffered the injustice of frustration, uncertainty and disappointment given legitimate expectation that he would receive planning approval. He also suffered the injustice of a loss of opportunity to apply for the NIRO scheme. I cannot however conclude whether that application would have been successful.

Issue 2: Whether the Council handled the applicant's complaint appropriately

80. The applicant complained about the accuracy of comments made by the Council when responding to his complaint about the planning process in relation to Application 213.
81. He complained that the Council's letter of 20 April 2016 '*gave the impression*' that his agent wanted all three planning applications taken to the Planning Committee. He has stated that the email correspondence between his agent and planning staff between June and September 2015, clearly show that this contention was erroneous.

82. He also complained that when dealing with his complaint the Council response was that in mid-2015 no '*group decision*' had taken place on Application 213, and therefore no final decision had been taken. He again stated that this was wrong and that the content of the Council's email correspondence with his agent clearly demonstrates that a decision had been taken.
83. The Council has an internal policy for dealing with complaints. I have reviewed the content of The Complaints Policy which states that '*The Council is committed to dealing with all complaints equitably, comprehensively and in a timely manner and to providing high quality services to those who make them.*'
84. I have referred previously in this report to the Council's Customer Service Charter. I note that the aim of the Council in the Charter is to '*provide quality, accessible and value for money services*'. The Charter also commits the Council to at all times '*Treat you fairly and with respect*'.
85. In the Council's response of 20 April 2016 to the applicant at Stage 1 of its complaints process, the Council referred to the email from the Case Officer of 25 June 2015 which recorded that Application 213 was '*considered to be acceptable*', but Applications 214 and 216 '*were indicated for refusal*'.
86. The Council advised the applicant that following the email of 25 June 2015 '*communications continued between Planning Officers and your agent, particularly a telephone conversation and an e-mail from the Principal Officer [to the agent] on 29th June 2015...to allow further assessment of all three proposed turbines...it is apparent that there were ongoing communications during June, July and August 2015, about bringing these applications before the Planning Committee*'.
87. The Council informed the applicant in its Stage 1 response to his complaint that it accepted '*you may have been led to believe that planning permission would be granted imminently ..., I apologise for the delays and for the lack of communication. However, it is clear from the file that all three applications were being negotiated/considered together.*'

88. The Council's response at Stage 2 of its complaints process states: *'The case officer on 28th June 2015 did indeed give his personal professional opinion regarding your application. However, a note on the file indicates that the officer did also advise that "group had not taken place". The officer is referring to the internal group decision process whereby cases are reviewed by the senior officer in order to ensure corporate decision making is adhered to.'*
89. That response also stated that *'Staff were fully aware from [1 July 2015] that the agent did not wish for [Application 213] to be referred into Planning Committee'.*
90. In response to investigation enquiries about the Council's handling of the complaint, reference is made to previous comments made by the applicant which stated that Council had misrepresented what took place between June and September 2015. The Council stated that *'Council is of the view it did not misrepresent what actually took place. The applicant had been provided with detailed accounts of reasons and justifications of the processing of the application.'*

Analysis and Findings

91. I note the comments of the applicant in relation to the Council's handling of his complaint. I also note the response provided by the Council in relation to this issue.
92. I have examined the relevant extracts from the Council's letter to the applicant dated 20 April 2015. I consider that the comments are in fact misleading as they suggest that the agent requested that Application 213 be brought to the Planning Committee. Having examined relevant correspondence I do not consider this to be the case as the correspondence clearly demonstrates that the agent did not request that Application 213 be brought to the Planning

Committee. However, I note that the Council clarified this issue in its Stage 2 response on 7 June 2016.

93. I note the relevant extract from the Council's response at Stage 2 which refers to the Case Officer providing his '*personal professional opinion*' on 28 June 2015. I have examined the Council correspondence during this period. The date of '*28 June 2015*' quoted in the Council's Stage 2 response is incorrect and the date should in fact be 28 May 2015.
94. That is because on that date the Case Officer made a note of a telephone call with the agent stating: '*advised that group had not taken place yet. Advised that the principle appeared ok*'. I consider that the reference to '*group*' in the Case Officer's note referred to a group discussion which was to take place between the Case Officer and the Principal Planning Officer.
95. This inaccuracy is significant because the applicant believed that the Council were informing him that no group discussion had taken place before 28 June 2015, even though he was aware that one had taken place on 25 June 2015. I conclude that the wrong date is a simple administrative error. The applicant in his complaint to my office claimed he had been misled and that the Council had lied. I can understand his firmly held belief.
96. **Finding: I find that in its complaint responses the Council provided the applicant with misleading and inaccurate information in relation to its processing of Application 213. I therefore uphold this issue of the complaint. I also note that the Council failed to clearly acknowledge and apologise to the applicant for its errors in the processing of this application.**
97. These failures are contrary to the standards set out in The Complaints Policy and The Customer Service Charter in which the Council's stated aim is to provide high quality services for complainants. I also find that these failures are contrary to the first Principle of Good Administration 'Getting it right' which requires a public body to act in accordance with relevant guidance.

98. The Second Principle of Good Administration requires bodies to 'Be customer focused'. This requires a public body to ensure that any information provided is accurate and complete. In this instance the Council's failure to acknowledge and apologise for the clear errors was contrary to the fifth Principle of Good Complaints Handling 'Putting things right'. This principle requires a public body to acknowledge mistakes and apologise when appropriate.
99. As a consequence of the maladministration I identified in relation to the Council's handling of the complaint I am satisfied that the applicant suffered the injustice of uncertainty and frustration as well as time and trouble in submitting his complaint to my office.

CONCLUSION

100. The applicant submitted a complaint to me about the actions of the Council.
101. The investigation of his complaint identified maladministration in respect of the following matters:
- The Council's failure to process Application 213 in an appropriate manner
 - The Council's failure to give adequate reasons for its decision and to maintain records of its consideration identified in this report
 - The provision of misleading and inaccurate information by the Council
 - The Council's failure to acknowledge and apologise for its errors.
102. I am satisfied the maladministration identified caused the applicant to experience the injustice of uncertainty, frustration, raised expectations, loss of opportunity, and time in trouble in pursuing the complaint to my office. I will outline the remedies for the injustice in the final section of this report.

Recommendations for Remedy

103. Having considered the nature and extent of the injustice sustained by the applicant in consequence of the maladministration identified in this report, I recommend the following remedies:

- The Council should apologise for the failings identified in this report in accordance with my guidance on apology.
- The applicant should receive a payment of £1000 by way of a solatium for the injustice of uncertainty, frustration and loss of opportunity.

104. Although the applicant lost the opportunity to apply for the NIRO scheme in consequence of the Council's maladministration, I am unable to conclude that his application would have been successful.

105. I recommend that the Council provide the apology and the solatium within one month of the date of my final report.

106. In order to improve the Council's delivery of the planning function, I also recommend that:

- The Council's Planning officers should be reminded of the need to make contemporaneous records of all group discussions and decisions. The Council should amend the Planning Protocol to reflect this requirement. The Council's Planning staff should have training in good record keeping.
- The learning points outlined in my report should be communicated to all relevant Council staff.

107. I recommend that the Council should draw up an action plan to incorporate these recommendations and should provide me with an update within six months of the date of my final report. This action plan should be supported by evidence to confirm that appropriate action has been taken.

108. In its response to my draft report, the Council stated that it accepted 'the

substantive finding of maladministration’ and ‘no issue is taken with the proposed remedy.’

Marie Anderson

MARIE ANDERSON
Ombudsman

April 2018

APPENDIX ONE

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.

- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

APPENDIX TWO

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being Customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.

- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.