



Investigation Report

Investigation of a complaint against Transport NI

NIPSO Reference: 16833

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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.

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EXECUTIVE SUMMARY

I received a complaint regarding how Transport NI (now DfI Roads) assessed and processed consultation requests regarding planning applications for four proposed developments near the complainant's home. The investigation also considered how Transport NI handled the complaint it received.

Issues of Complaint

I accepted the following issues of complaint for investigation:

- **Issue 1: Did Transport NI appropriately consider the planning consultations in respect of four planning applications?**
- **Issue 2: Whether Transport NI's investigation of the complaint it received was adequate**

Findings and Conclusion

The investigation identified maladministration in respect of Transport NI's failures in the following matters:

- Failure to provide and record reasons why the four planning applications were considered acceptable
- Failure to provide and record reasons why a detailed Transport Assessment was not deemed necessary and why the transport impact was deemed insignificant
- Failure to provide and record reasons why the accident history was not considered relevant to the four planning applications
- Failure to record discussions with the applicant regarding one application
- Failure to treat the complainant's email of 25 May 2016 as a complaint
- Failure to make and retain a record of telephone calls with the complainant

I have not found maladministration in respect of the complaint that the only assessments undertaken were for site access and that Transport NI did not consider the following:

- A Transport Assessment in relation to the four planning applications
- The cumulative impact of the four planning applications
- The nature of the materials being transported as part of the proposed development
- Other road users in its assessment of the four planning applications

I am satisfied that the maladministration I identified caused the complainant to experience the injustice of uncertainty, frustration, upset and time and trouble.

Recommendations

I recommended that:

- The Permanent Secretary of the Department for Infrastructure issues the complainant with an apology for the failings identified, within **one month** of the date of my final report
- Transport NI makes a payment of £350 by way of solatium for redress in respect of the injustice of uncertainty, frustration, upset, and time and trouble, within **one month** of the date of my final report
- Transport NI implement changes to the process for considering and responding to consultations on planning applications, so that a clear record is made of its consideration of the application and the reasons for its response. I also recommend that it provide training to relevant staff about the complaints procedure, once it has been reviewed in light of my comments below.
- An action plan is set up which outlines the steps considered in implementing my recommendation on the consideration of the planning applications and provide me with an update within **three** months of the date of the final report. That action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies).

I am pleased to note that Transport NI accepted my findings and recommendations.

THE COMPLAINT

1. I received a complaint about the actions of Transport NI¹ in relation to its consideration of, and response to, four planning applications for agricultural development near the complainant's home. In this case, Transport NI was a consultee² during the processing of the four planning applications submitted by the planning authority. In particular the complainant stated that Transport NI did not properly consider the applications in line with published policies and procedures. The investigation also considered whether it adequately investigated the complainant's subsequent complaint.

2. By way of background, the four planning applications are as follows

B/2012/0120/F – planning application for anaerobic digester. Transport NI's final consultation response is dated 18 May 2012. Planning permission was granted on 4 December 2012.

B/2013/0043/F – planning application for original pig breeding unit with three feed bins and above ground slurry store. Transport NI's final consultation response is dated 17 October 2013. Planning permission was granted on 31 October 2013.

LA01/2015/0188/F (formerly B/2015/0188/F) – planning application for a broiler poultry house housing 33,500 birds, landscaping and ancillary site works. Transport NI's final consultation response is dated 3 June 2016. The decision as to planning permission has not been made at the time of my draft report.

B/2015/0005/F – planning application for an additional four pig breeding units (in addition to permission B/2013/0043/F). Transport NI's consultation response is dated 11 January 2018 and outlines that Transport NI has issues with the application. The decision as to planning permission has not been made at the time of my draft report.

¹ Transport NI is now known as DfI Roads.

² On 1 April 2015, TNI became a statutory consultee by virtue Schedule 3, Part 1 of the Planning (General Development Procedure) Order 2015

Issues of complaint

3. The issues of complaint which were accepted for investigation are as follows:

Issue 1: Did Transport NI appropriately consider the planning consultations in respect of planning applications B/2012/0120/F, B/2013/0043/F, LA01/2015/0188/F and B/2015/0005/F?

Having reviewed the evidence I determined that an additional issue warranted further investigation, namely:

Issue 2: Whether Transport NI adequately investigated the complaint made to them?

INVESTIGATION METHODOLOGY

4. As part of the investigation into the complaint, the Investigating Officer obtained and examined all relevant Transport NI documentation together with their comments on the issues raised by the complainant. This documentation included information relating to their investigation of the complaint. In addition two of my Investigating Officers met with the complainant and Transport NI officials on separate occasions.
5. In investigating complaints of maladministration, I am unable to challenge the merits of a discretionary decision unless it is attended by maladministration.

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 Principles³:

- The Principles of Good Administration

³ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- The Principles of Good Complaints Handling
- The Ombudsman Association's Principles for Remedy

8. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of Transport NI.

The specific standards relevant to this complaint are:

- Planning Policy Statement (PPS) 3 : Access, Movement and Parking (February 2005)
- Development Control Advice Note (DCAN) 15 : Vehicular Access Standards (August 1999)
- Transport Assessment Guidelines for Development Proposals in Northern Ireland (9 November 2006)

9. 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.

10. My role in this complaint relates to the examination of the administrative actions of Transport NI in its consideration of the requests received from the planning authority for a response to the four planning applications. The complaint does not relate to any actions taken by the planning authority in respect of any of the planning applications which are subject to this complaint. I recognise that Transport NI is a statutory consultee of the planning process, and it provides an opinion to the planning authority on the acceptability or otherwise of issues arising from the planning application relating to its remit as the roads authority. The ultimate decision as to whether planning permission is granted is decision for the planning authority (in this case the relevant planning authority was the Department of the Environment, and Causeway Coast and Glens Borough Council).

MY INVESTIGATION

Issue 1: Did Transport NI appropriately consider the planning consultations in respect of planning applications B/2012/0120/F, B/2013/0043/F, LA01/2015/0188/F and B/2015/0005/F?

Detail of Complaint

11. The complainant alleged that Transport NI failed to adhere to published policies and guidelines in its consideration of the four planning applications. He complained that its assessment of data was restricted to visibility splays for site entrances. Further, he complained that there was no 'Traffic Assessment' in accordance with Transport NI guidelines and that it failed to carry out an assessment of cumulative traffic flows from each of the developments on the road network. He also complained that Transport NI failed to assess traffic noise and other nuisance effects and that an Accident History Assessment was not completed until after the Transport NI response was submitted to the planning authority. Finally, he complained that Transport NI failed to assess the impact on pedestrians '*associated with fear and intimidation caused by increases in the volume of traffic and its HGV composition...*' and the impact on pedestrian amenity.

12. I have considered Planning Policy Statement (PPS) 3 – Access, Movement and Parking published by the former Department of the Environment for Northern Ireland (DOE) in February 2005, which applied in relation to these applications. I note Policy AMP 2 'Access to Public Roads' which states '*planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where: a) such access will not prejudice road safety or significantly inconvenience the flow of traffic...*' I also note Policy AMP 6 - Transport Assessment states '*in order to evaluate the transport implications of development proposal the Department will, where appropriate, require developers to submit a Transport Assessment*⁴.' At paragraph 5.37 of Policy AMP 6 there is reference to '*the Draft guidelines to Transport Assessment in Northern*

⁴ In PPS 3, Transport Assessments replace Traffic Impact Assessments

*Ireland (2004)*⁵.’

13. I have also considered Development Control Advice Note 15, Vehicular Access Standards published by the former DOE Planning Service in August 1999 (DCAN 15). Section 1.1 of DCAN 15 states that PPS 3 refers to standards for vehicular accesses and that DCAN 15 *‘sets out and explains those standards.’* I also note section 1.3 which states *‘...however, access is one factor among many – albeit a very important factor – which the Department has to consider when dealing with planning applications...’* I further note sections 2.1 to 4.3 of DCAN 15 are related to assessing the impact of proposed developments on visibility of road users.
14. The ‘Transport Assessment Guidelines for Development Proposals in Northern Ireland’ (the TA guidelines) published by the former DOE Planning Service on 9 November 2006, are also relevant to the complaint. I note chapter 2 of the TA guidelines which defines a Transport Assessment as *‘a comprehensive review of all the potential transport impacts of a proposed development or re-development, with an agreed plan to mitigate any adverse consequences.’*
15. I also note chapter 3.5 of the TA guidelines which outlines guidance for deciding whether a detailed Transport Assessment is required. It states *‘as a guide, proposals exceeding the following parameters may have sufficient transport impacts to require the completion of a detailed Transport Assessment’.* Chapter 3.5 also states *‘...other considerations: where the Planning Service and the Roads Service consider the proposals raise significant transport implications...’*
16. I further note chapter 4.111 of the TA guidelines refers to the Traffic Impact Analysis contained within a Transport Assessment and states the following should be noted *‘...the significance of a traffic impact depends not only on the percentage increase of traffic but the available capacity. A 10% increase on a lightly trafficked road may not be significant, whereas a 1% increase on a congested road will be...’*

⁵ The draft guidelines later became the Transport Assessment Guidelines for Development Proposals, referred to later in my report

17. Chapter 3.25 of the TA guidelines is relevant to the issue of the assessment of the cumulative impact of development proposals and states: *'where proposals may emerge independently from one another, rather than as a single proposal, the situation is more complex. This can give rise to a domino effect when one successful application leads to further proposals, as may occur with housing. Planning Service may be able to foresee when this is likely to occur (or react when it starts to happen), by aiming to assess the sites together, possibly as part of an area-wide development brief or master plan...'*
18. In response to investigation enquiries relating to the assessment of visibility splays, Transport NI stated that its officials *'are fully aware [of the guidance] and that PPS 3 and DCAN 15 are also relevant documents.'* It also stated *'it is our consideration that the main roads considerations in these application relate to the accesses onto the public road, vehicle movements generated by the proposals, suitability of the haul routes, any necessary road infrastructure improvements, all along with assessment of road safety.'*
19. Transport NI also stated it did not accept the complaint that the only assessments undertaken were for site access. Further it stated that *'the haul route is onto the local/rural road network; these roads are unrestricted and already carry farm associated traffic both in terms of size and numbers. From this assessment new access arrangements/geometry were deemed necessary along with the provision of a lorry passing lay-by on Moys Road.'*
20. As part of the investigation, Transport NI was asked to clarify what it considered in its assessment of the four planning applications. It stated *'factors such as; the width of the roads, existing traffic flows, proposed generated traffic flows, visibility, existing geometry, structural stability, verges, passing opportunities of the suggested haul routes are considered by a Roads engineer. The knowledge, experience and roads engineering judgment [sic.] of Departmental Officials was used and applied in the consideration of the applications. The roads in this area are currently used for normal farming and industrial activities...these roads are currently unrestricted for traffic and vehicular use in terms of size, height and weight. Given the exceptionally*

small increase in traffic volumes proposed these application were considered to be acceptable to DfI Roads⁶.

21. Further to additional investigation enquiries Transport NI confirmed that *'there is no written evidence [as to the factors taken into consideration]...the knowledge, experience and roads engineering judgement of the Departmental Officials was used and applied in the consideration of the application. This is part of the normal processing of applications and only the recommendation reached is formally recorded.'*
22. In relation to the complaint concerning the transport assessment, it stated the TA guidelines are applicable to all four planning applications and were used *'as a reference guide'* and that Chapter 3 of the TA Guidelines is relevant. It outlined *'officials used the parameters listed within paragraph 3.5 to decide in each case whether a detailed transport assessment was required. The Department considered that detailed Transport Assessments were not required in these cases.'*
23. In response to investigation enquiries, Transport NI stated *'Transport Assessment Forms [TAFs] should be submitted for planning applications. DfI Roads considers the content of the TAF and decides if a detailed Transport Assessment is required.'*
24. As part of the investigation, Transport NI was asked to clarify how it gave consideration to the TAFs submitted as part of the four planning applications. It responded as follows:

'Application B/2013/0043/f (1 pig breeder unit)

A TAF was submitted dated 20 February 2013. DfI Roads considered the additional 4 vehicle movements per day would have no adverse impact on the existing roads network.

Application B/2015/0005/F (4 pig breeder units)

TAF was submitted dated 30 December 2014 stated that on average 14 HGVs

⁶ Department for Infrastructure – Roads

(transport/delivery/slurry tanker lorry) per week, plus 2 smaller rigid lorries per week and 3 staff car journeys per day.

It is worth noting that Chapter 10 – ‘Transport’ of the Environmental Statement dated June 2015 gave details of traffic generation as 26 vehicles/week... DfI – Roads considered the additional 3/4 vehicle movements per day would have no adverse impact on the existing roads network...’

Application B/2012/ 0120/F (Anaerobic Digester)

There was no TAF submitted, however the Applicant’s Agent provided additional information. As this application was for ‘farm use’ with materials being source from the farm and no additional traffic was envisaged, DfI Roads considered the proposed application would not have an adverse affect [sic.] on the existing road network.

Application LA01/2015/0188/F (Proposed broiler House)

There was no TAF submitted, however Chapter 11 – Transportation of the Environmental Statement, dated December 2016, stated that the proposed broiler house would add 168 vehicle movements per annum, the existing broiler house produced 245 movements per annum, giving a total movement of 413 movements per annum (average 1.1/day). This increase was considered to be acceptable by DfI Roads.’

25. In response to investigation enquiries relating to application B/2015/0005/F, Transport NI stated *‘the accident history of Moys Road, Glenhead Road and portions of the Pollysbrae Road and Baranailt Road were checked. As far as TNI can ascertain in the last 10 years there have been a total of 2 reported injury accidents (in 2006 and 2011) on the Glenhead Road between Baranailt Road and Pollysbrae Road and a total of 3 accidents at the junction of Glenhead Road and Baranailt Road, with none since 2008.’*
26. In response to a request for clarification of the term ‘slight’, Transport NI referred to the TA guidelines and stated *‘slight is not a defined term...DfI – Roads considered*

the additional 3/4 vehicle movements spread across a day would have no significant impact on the existing roads network.'

27. As part of the investigation in to the concerns about the road safety and the cumulative impact of the proposed development, Transport NI stated the Accident History Map was compiled on 3 May 2016 and *'this was undertaken following concerns expressed by [the complainant]. The concern related to the cumulative effect from a number of planning applications. A summary of the accident record was included in the Department's response letter of 17 May 2016...in the cases identified it is our view that roads engineering was not the primary causation. The Department is satisfied that the Accident Record in the area has no impact upon our decision...'*
28. It also stated *'review or referral to the traffic accident/collision history is not a defined requirement...in particular cases the history may be sought however this would be dependent upon the scale/type and location of the development proposal. It should also be noted that the collision information is sensitive and confidential and may be the subject of legal proceedings. The case officer can obtain the number and location of the road traffic collisions as well as more detail on a specific collision...there are many different factors associated with the cause of a road traffic collision, one of these is roads engineering. However even allowing for the complications in defining and identifying the primary cause of a road traffic collision, in turn it may not be appropriate to relate these to proposed traffic generated from a particular planning application.'*
29. It further stated the use of accident history *'has resource implications but can on occasions be a useful reference to provide factual information in specific cases.'* Transport NI provided clarification on this point and stated *'...the Department is satisfied that the accident/collision record in the area did not require specific or a more detailed review.'* It also stated *'compiling the accident history for the individual planning applications...was not deemed necessary. Factors considered in forming this view included; the type/scale of the development, number of vehicles generated by the proposal, location, standard and suitability of the rural roads network in the area, current farming vehicle activities on these roads.'*

30. In response to investigation enquiries about its consideration of materials being transported and the impact on other road users, Transport NI stated *‘through the assessment of a planning application the Department will be aware and consider the type, size and number of vehicles along with the nature of the material being transported along the haul routes, however consideration of the risk of hazardous material to be transported does not come under our direct scrutiny and is not a matter for Dfl.’*

31. It further clarified *‘all developments under consideration are served by rural roads without footways, street lighting and with limited verge width. There is an onus when using such roads on both vehicle drivers and pedestrians to exercise caution. The very small increase in traffic generated by these proposed developments were considered acceptable to Dfl Roads.’*

32. In addition, *‘it is incorrect to state that Dfl Roads does not take other road users into consideration in such decisions. All roads users are taken into consideration, however in these applications the additional volumes of traffic were very small and not dissimilar in nature to that already using these roads so was deemed acceptable.’*

33. A careful examination of Transport NI’s files included an examination of the following records:

(i) **B/2012/0120/F – Anaerobic digester**

I note within the records a consultation request from the Northern Area Planning Office of the former DOE dated 11 May 2012. There is a ‘Planning Application Consultation (DC) Checklist’ (the DC Checklist), pro forma which is completed and signed by the Transport NI Case Officer and is dated 14 May 2012. The DC Checklist prompts the case officer to consider various issues including visibility splays and forward sight distances, which makes specific reference to DCAN 15. In this case, a calculation has been noted by the case officer. The DC checklist also prompts the case officer to consider the road infrastructure, draw a site sketch and

make a recommendation. The file contains photographs labelled of the site locus dated 14 May 2012. A *'Planning Application Consultation Response'* dated 14 May 2012 recommended that the planning authority request a revised location plan from the applicant.

34. The files disclose that a further consultation request was received by Transport NI from the Northern Area Planning Office dated 18 May 2012. I also note a further *'Planning Application Consultation Response' dated 18 May 2012 which states 'Roads Service have no objections to this proposal subject to the following Conditions and Informatives...'* There is a copy of the 'Approval of Planning Permission' form dated 4 December 2012 on the Transport NI files.

(ii) **B/2013/0043/F – Pig breeding unit**

35. I note within the records a consultation request from the Northern Area Planning Office of DOE dated 27 March 2013. I also note within the records a DC Checklist which is signed by the Transport NI case officer and dated 18 April 2013. The DC Checklist takes the same format as that used in the consultation for the anaerobic digester (paragraph 32 refers). A 'Planning Application Consultation Response' form dated 18 April 2013 states *'Roads Service has no objection in principle, however the following matters should be addressed:-*

- *The applicant/Agent should be asked to provide HGV vehicle swept paths⁷ for the largest HGV that will be attracted to the site...'*

36. The Transport NI response requested the Council to seek further information about the gradients and visibility splays of the access routes involved in this particular planning application.

37. On 5 July 2013, an email was received by the Transport NI case officer from the applicant's architect, which attached a proposed lay-by sketch. This email refers to 'discussions/meeting' about the application. By email the case officer (undated) replied *'I've had a chance to discuss this. It is Roads Service's opinion that this suggested position of the lay-by does not provide a suitable advanced "pull-in"*

⁷ Swept path is the area swept out by the side of a vehicle body as a result of its turning motion

opportunity for two vehicles meeting on this bend on the narrow roadway...

38. The Council issued a consultation to Transport NI on 26 September 2013, which indicated that further information and amended drawings had been submitted by the applicant. I also note a 'Planning Application Consultation Response' form dated 27 September 2013 was submitted by Transport NI. This response stated *'issues raised in the previous consultation response dated 18th April 2013 have not been addressed'* and listed issues which Roads Service require to be addressed, including the gradient of the accesses, the surface of access, visibility splays and the proposed lay-by. The consultation response is signed by the case officer, the development control engineer and acting Network Planning Manager.
39. Finally, a further planning application consultation was issued on 17 October 2013 and a 'Planning application Consultation Response' was issued by Transport NI on the same date. The consultation response *stated 'Roads Service has no objection subject to the following Conditions and Informatives...'* The consultation response is signed by the case officer, the development control engineer and acting Network Planning Manager. Subsequently, the planning application was approved by Planning Service on 31 October 2013.
40. (iii) **B/2015/0005/F** - additional 4 pig breeding units. The following detail is noted from the relevant file.
- A consultation request from the Council⁸ dated 23 July 2015. On 30 July 2015, Transport NI submitted a 'Planning Application Consultation Response' which stated *'Transport NI has no objection in principle to this proposal, however will require some minor amendments to the submitted Proposed Site Layout Plan...'* The amendments requested related to an error in the citing of the previous planning approval. Further, a file record was made on 31 July 2015 by the case officer regarding a telephone conversation with the complainant, wherein he outlined his concerns about the consultation response. The records show that the complainant was advised to submit his objection through the planning process. Subsequent to his contact with the case officer, a site visit was carried out and the DC Checklist was

⁸ On 1 April 2015, a number of planning functions were transferred from the former DOE in Northern Ireland to Councils pursuant to the Local Government Act (Northern Ireland) 2014

completed dated 6 August 2015.

41. A further planning consultation request was received from the Council on 21 April 2016 following the submission of additional information from the applicant. A map is contained within Transport NI records which is entitled 'Accident History 3 May 2016'. The map is of the locus of the four planning applications and there are a number of areas plotted containing a date, the cause of the (assumed) collision and the severity of injury caused. On 10 May 2016, a 'Planning Application Consultation Response' was submitted by Transport NI which sought clarification regarding the transportation of the slurry generated by the proposed development. Transport NI also sought clarification regarding the excess slurry produced by the development, in addition to that utilised by the Anaerobic Digester. It also sought information regarding the drainage provision *'to confirm that there is no risk of flooding onto the public road.'*
42. A final planning consultation request was received by Transport NI on 7 December 2016. On 14 February 2017, it issued a response to this consultation. The response stated *'TNI has considered the content of the Environmental Statement Addendum II and has no objection to this proposal.'*
43. I note Transport NI's records hold an 'Environmental Statement' (ES), which outlines at chapter 10 the transport related issues for the proposed development. Chapter 10 of the ES includes information regarding the description of the operation regarding existing vehicle movements and that which are proposed. The type of vehicle, its origin/destination of the journey and its purpose are recorded here.
44. The applicant has submitted to the Council with this application a Transport Assessment Form dated October 2016 which outlines in Part C *'the level of traffic generated by this proposal on a usual day is low, therefore there will be no significant transport impacts. The busy periods will coincide with spreading of slurry on land...in this context, the overall transport impact will be slight.'*
45. (iv) **LA/01/2015/0188/F** application for a broiler house.

The records disclose a consultation request from the Council dated 26 May 2015. A DC Checklist was completed on 3 June 2015 which includes a site sketch depicting road measurements. In addition, photographs of the site locus are contained within the file and these are dated 3 June 2015. On the same date, a 'Planning Application Consultation Response' was submitted which stated that Transport NI required a revision of the plans as these were not considered accurate.

46. A further consultation request from the Council was received by Transport NI on 28 September 2015. On 29 September 2015, it submitted to the Council a 'Planning Application Consultation Response' which stated *'Transport NI has no objection to this proposal subject to Conditions and Informatives...'*
47. A final consultation request from the Council was received by Transport NI on 31 January 2017. On 9 February 2017, it submitted its response to the Council. The response stated *'TNI has considered the content of the Environmental Statement and has no objection to this proposal.'*

ANALYSIS AND FINDINGS

48. The complainant complained about Transport NI's consideration of the four planning applications outlined above and stated that it did not adhere to published policies and guidelines. PPS 3, DCAN 15 and TA guidelines are relevant to Transport NI's consideration of planning consultation requests. Having considered the guidelines, I will consider each of element of the complaint.
49. The complainant alleged that Transport NI's consideration of the four planning applications was restricted to visibility splays. I have considered PPS 3 which in Policy AMP 2, refers to access to public roads and the relevant safety considerations. This policy is the framework for the Council's consideration of applications for proposed developments. I have also considered DCAN 15 which provides guidance to applicants, in particular sections 2.1 to 4.3. It is clear from the DCAN 15 guidance that accesses, and in particular the visibility at such points, are

an important consideration in the planning process. Therefore this issue also warrants Transport NI's consideration as a consultee. I note that consideration of access is reflected in the DC Checklist pro-forma used by Transport NI in its consideration of all four planning applications. However I accept that the access points are only one consideration for Transport NI (having regard to DCAN 15 guidance).

50. The Transport NI records in respect of each of the four planning applications have been reviewed. In respect of **B/2012/0120/F** (anaerobic digester), there is a record that a site visit was carried out on 14 May 2012. The DC Checklist records the fact that other matters were taken into account by the case officer which included the road infrastructure. The case officer considered whether other more specific assessments were required, and also whether street furniture and lighting was satisfactory. Transport NI clearly took into account other matters than simply the access to the development site.
51. In respect of **B/2013/0043/F** (pig breeding unit) the records evidence that a site visit took place on 18 April 2013 and that consultation responses were issued on that date, and subsequently on 27 September 2013 and 17 October 2013. From the records, it is clear that factors other than accesses were taken into account by Transport NI. I note in this case that it had requested clarification of information regarding the proposal at two stages within its process.
52. In respect of application **B/2015/0005/F** (additional 4 pig breeding units), I note Transport NI received the consultation request from the planning authority on 23 July 2015. On 30 July 2015 it advised the Council that it had no objection 'in principle' to the development. I also note further responses were submitted by it to the planning authority on 10 May 2016 and 14 February 2017. The DC Checklist provides a record that other considerations were taken into account by the case officer in line with the remaining applications.
53. Finally, in respect of application **LA01/2015/0188/F** (broiler house), I note Transport NI were first consulted by the Council on 26 May 2015 and I conclude that its officials

carried out a site visit on 3 June 2015. I note that it submitted consultation responses to the Council on that date, 29 September 2015 and again on 9 February 2017. The DC Checklist provides a record that other considerations were taken into account by the case officer.

54. I am therefore satisfied that Transport NI did take other considerations into account when considering the proposed development in each of the four planning applications. **I therefore do not uphold this element of the complaint.**
55. I have carefully considered the records provided by Transport NI in relation to its consideration of the four planning applications. I note its response to investigation enquiries that the knowledge and experience of the roads engineers was used and applied in relation to the applications. I consider that in each of the cases while the decisions (that the applications were deemed acceptable) are clearly recorded, the reasons for arriving at the decisions are not. A record of the reasons why Transport NI considered the application acceptable is necessary as an explanation as to how it came to a decision and what factors it considered. The giving of reasons for decisions is a key tenet of good administration, and a 'shield' for a public body to defend its actions when challenged. Transport NI failed to keep records in relation to how it arrived at its decision on each of the four planning applications is contrary to the third Principle of Good Administration which requires a public body to be 'Open and accountable' by keeping proper and appropriate records and giving reasons for decisions. The giving of reasons for a decision is essential for fairness and transparency. I consider this requirement has not been met by Transport NI and I consider this failing amounts to maladministration.
56. The complainant alleged that there was no 'Traffic Assessment' of the four planning applications and that this failed to meet Transport NI guidelines (paragraph 1 refers). I accept by analogy that this refers to the Transport Assessment introduced by PPS 3.
57. I note in PPS 3, Policy AMP 6, that the decision as to whether a Transport Assessment is required, is a matter for the planning authority (the Council) in

consideration of the planning application and not Transport NI. I also note from the TA guidelines that the planning authority may be informed by Transport NI regarding any such decision. A Transport Assessment *may be requested* by Transport NI in its consideration of its response as a consultee to a development proposal. I have therefore considered this aspect of Transport NI's role in the context of the complaint.

58. Following an examination of Transport NI's records, I note that TAFs were completed in relation to two of the four planning applications (**B/2013/0053/F** and **B/2015/0005/F**). Transport NI state that in respect of the remaining two applications, no TAFs were submitted. I note from an examination of the records that details concerning transport were provided separately to the planning authority. In respect of application **LA01/2014/0188/F**, I note information regarding transportation were included in the Environmental Statement provided to the planning authority and subsequently to Transport NI.
59. In response to investigation enquiries, Transport NI confirmed that it considered each of the TAFs and additional information provided by the applicant to the Council in considering whether it was necessary to seek a detailed Transport Assessment.
60. In respect of the four planning applications, Transport NI decided that a detailed Transport Assessment was not necessary. Transport NI files record this decision in respect of application **B/2013/0043/F** (pig breeding unit). In this respect, it sought further information and clarification from the applicant in relation to issues raised. I consider the absence of a request for a detailed Transport Assessment reflects the Transport NI view that one was not required. However, in order to meet the requirements of the Third Principle of Good Administration, Transport NI ought to have a record of the decision that a detailed Transport Assessment was not deemed necessary.
61. I note however that in each of the four planning applications, Transport NI state that the information provided was considered and it was deemed that the impact on the roads network was not sufficient to require a detailed Transport Assessment. I note

Transport NI rely on a test of significance in terms of the impact that a development will have on the roads network. I also note from enquiries that this term is not defined in the context of Transport NI considerations.

62. In respect of all four planning applications, the investigation into the complaint has not uncovered evidence of how and when the TAFs and additional information (including the Environmental Statement) were considered by Transport NI. Therefore, there is no record of reasons why it made the decision that the transport considerations were acceptable. Neither are there recorded reasons as to why it considered the transport impact was deemed to be minimal. I consider the failure to provide and record these reasons is contrary to the third Principle of Good Administration, 'Being open and accountable'. While there is no evidence to refute Transport NI's assertion that a Transport Assessment was not necessary in each case, the absence of a record of that decision and the reasoning for same is maladministration which has caused the complainant the injustice of uncertainty.
63. In response to the draft Investigation Report, the complainant stated that the Transport Assessment Process was not carried out in accordance with TA guideline 3.2 in respect of applications B/2012/0120/F and LA01/2015/0188/F, as no TAF was provided and he considered this to be 'further evidence of procedural maladministration'. I have considered these comments and note that it is the responsibility of the applicant or his agent to complete the TAF. I also take account that the information contained within the TAF was provided to the planning authority in a different format and I make no further finding on this issue.
64. The complainant stated that Transport NI failed to carry out an Accident History Assessment and that it did not assess the cumulative impact of the four planning applications.
65. I have considered the provisions contained within chapter 3.5 of the TA guidelines relevant to this issue. I note that the TA guidelines do not specify a requirement that applications made in close succession ought to be considered together. However, this may be a consideration for the planning authority.

66. Transport NI stated that the complainant raised concerns about the accident history of the area, and this was in the context of the assessment of the cumulative impact of the four planning applications. It also stated that referral to a traffic accident history is not a defined requirement. The investigation of this complaint has not uncovered evidence of a requirement for an accident history assessment. However, this was conducted in respect of the locus of the four planning applications in May 2016 in response to the complainant's concerns. **I therefore uphold this element of the complaint.** However, the investigation has not uncovered a record that the information contained in this map was considered by Transport NI and how it reached the conclusion that *'roads engineering was not the primary causation.'* I find the failure to record the reasons for this decision is contrary to the third Principle of Good Administration, 'being open and accountable' and constitutes maladministration.
67. The complainant alleged that Transport NI did not take into consideration the nature of the materials being transported in relation to the impact of the four planning applications on transport considerations.
68. In response to this element of complaint, it stated the nature of the materials, including the risks of hazardous materials, is not a consideration for Transport NI. Rather, Transport NI are concerned with the nature of the vehicles involved, including the size and number of vehicles. I note this information is contained within the Environmental Statement which was submitted by the applicant to the planning authority and considered by Transport NI. I also note that the number of vehicles is contained within the TAFs which were submitted in relation to the applications related to the pig breeder units.
69. The investigation of the complaint has not disclosed evidence that Transport NI was required to consider the nature of materials being transported as part of the proposed development. The investigation has uncovered evidence that Transport NI did consider matters related to the vehicles involved, which were within its remit. **I therefore do not uphold this element of the complaint.**

70. The complainant also alleged that Transport NI did not take into account other road users such as pedestrians, in its consideration of the proposed developments. I note Transport NI did not accept this assertion and stated that all road users are taken into consideration. However Transport NI confirmed its view that in the four planning applications, the additional traffic was *'very small and not dissimilar in nature'* to that already using the road. I also note Transport NI stated that the roads being used are rural and that there is an obligation on users to exercise caution. I consider this would be the case even without the four proposed developments.
71. There is no evidence as to how the four planning applications were deemed acceptable from the point of view of all road users as Transport NI have now claimed. There is no evidence of this decision and I am critical of Transport NI's failure to keep clear and accurate records in this regard.
72. As part of the investigation of the complaint, email records regarding the proposal were noted. The email dated 5 July 2013 makes references to discussions having taken place. There is no record of these discussions, the attendees or their purpose and content. The recording of such interactions as part of the consultation process is, in my view crucial in allowing members of the public to understand the reasons how decisions have been reached. This is a further failure which is contrary to the third Principle of Good Administration, 'Being open and accountable' and constitutes maladministration.
73. I am satisfied that as a result of the maladministration I have identified, the complainant sustained the injustice of uncertainty, frustration and upset as he has been prevented from understanding the reason why, in its consultation response, Transport NI deemed the four planning applications acceptable for the reasons outlined above.
74. In the examination of the complaint, I have examined only Transport NI's role as a consultee in the planning process. I have also considered the explanations and reasons now provided to my Office by Transport NI to support the view taken that the four planning applications were deemed acceptable by roads engineers who exercised professional judgment in relation to the issues. The absence of reasoning

in relation to this judgment by Transport NI officials is concerning and goes beyond mere failures in record keeping. However, I have found no evidence that would cause me to question these discretionary decisions.

Issue 2: Whether Transport NI's investigation into the complaint was adequate

75. The investigation into the complaint dealt with above led to my consideration of a further issue, namely how Transport NI handled the complaint.
76. The Department for Infrastructure (DfI) Complaints procedure (the complaints procedure) defines a 'complaint' as '*an expression of dissatisfaction about a service we provide*'.
77. I also note the complaints process itself comprises two steps. The first step (initial complaint) is to contact '*the officer you have been dealing with, or a local manager, and provide them with details of your complaint. They are best placed to deal with your complaint quickly.*' The complaints procedure also states '*we aim to...acknowledge all written complaints within three working days; issue substantive replies to 95% of written complaints within fifteen working days. If it is not possible for us to meet these timescales, you will be informed and advised of an estimated response date.*'
78. The second step in the complaints procedure states '*if you are dissatisfied with the handling of your complaint, you have the right to escalate the issue to a member of the Senior Civil Service who will oversee an investigation of your complaint within six months of the date of our response to your complaint, or we will consider...the Department's timescale for issuing Step 2 responses is also 15 working days.*'
79. In response to investigation enquiries, Transport NI stated '*the Department has been fair and very open with [the complainant] throughout this time period; from the submission of the application to now. Initial contact was when the case officer*

accepted a telephone call from [him] in which the road issues associated with application [sic.] were discussed. [He] also submitted a Freedom of Information request which the Department accepted and responded in detail with the information requested. [He] then submitted a number of letters; these were addressed to a range of staff; starting from the case officer and rising to the Chief Executive/Deputy Secretary Dfl. These have all been answered in detail requiring significant staff resource and time input.'

80. Transport NI further stated *'a copy of a handwritten file note of [the complainant's] phone call of 31st July 2015 is contained in the copy file...no other phone calls with Development Control Section were recorded. [His] e-mail correspondence with Dfl Roads is also contained in the copy file...'* Transport NI also clarified *'in this case the Department does not hold a specific complaints file, the letters of complaint and responses are included in the file no B/2015/0005/F.'*

81. I note within the complaint file there is a handwritten note of a telephone conversation which took place between the case officer and the complainant on 31 July 2015. The note records that the complainant *'was concerned that Transport NI had not given enough time to fully assess this application...'* The note also records his specific concerns. It is further noted *'I explained to him that he could object through Planning and if he had traffic related issues, Planning would re-consult Transport NI for comment.'*

82. The records contain an email from the complainant to the case officer on the same date seeking certain information. The final paragraph of the email states *'you may consider this request under Freedom of Information...'*

83. On 28 April 2016, the complainant emailed the case officer requesting further information and again stated that it may be considered as a Freedom of Information request. He sent a further email on 3 May 2016, which stated *'I still await your reply to my specific questions...'* On that date, he also emailed the Divisional Roads Manager, forwarding his earlier email to the case officer.

84. On 17 May 2016, a response was issued from the Network Planning Manager. On 23 May 2016, the complainant sent a further email to the case officer and to the Council. This email outlines his dissatisfaction with the process which had been undertaken by Transport NI. The case officer replied to this email on 24 May 2016 and stated *'TNI stands by the comments, submitted to the Local Planning Office, for this application.'* The complainant sent a further email on 25 May 2016 which reads *'I am making a formal complaint against Transport NI...'*
85. The complainant emailed a senior Transport NI official on 5 July 2016 expressing his continued dissatisfaction with the actions of Transport NI. The senior official replied by email on 10 August 2016 and stated *'thank you for your email dated 5 July 2016 for information under the Freedom of Information Act, regarding a planning application...'*
86. The complainant again emailed a senior Transport NI official on 20 November 2016 expressing continued concern regarding the processing of the planning consultation responses. I note a reply was issued by letter on 13 December 2016 stating that the senior official was *'satisfied that the Department's handling of the administration and processing of the planning consultation has been dealt with in a proper way'*.

ANALYSIS AND FINDINGS

87. I have considered the chronology of the complainant's contact with Transport NI regarding his concerns about the planning consultation. I note he first contacted the case officer by telephone and this was followed up with an email on the same date. In this email, the complainant makes specific reference to Freedom of Information legislation. I have considered the complaints procedure and the definition of a 'complaint'. I am satisfied that the email on 31 July 2015 was to seek information pursuant to Freedom of Information legislation, and it was reasonable therefore that Transport NI did not consider this as a 'complaint' within the meaning of its complaints procedure.

88. Following a break in contact, the complainant again emailed Transport NI seeking further disclosure of information in April and May of 2016. I have carefully considered the email correspondence of 25 May 2016 in line with the definition of a complaint as prescribed by the Complaints Procedure. I have considered the content of the email and my view is that the complainant is clearly expressing dissatisfaction about the service provided. I acknowledge that the email was responded to, however given the level of detail in the email, the response does not indicate that there was significant consideration given to its contents.
89. The investigation has not disclosed evidence that this email was treated as a complaint. I consider this email ought to have been treated as a Step 1 complaint under the Complaints Procedure and the failure to do so was contrary to the First Principle of Good Complaint Handling, 'getting it right' which requires public bodies to act 'in accordance with the law and relevant guidance, and with regard for the rights of those concerned'. I consider that Transport NI did not act in accordance with the Complaints Procedure and I consider this failure constitutes maladministration.
90. I also note that the complainant stated in his complaint that he contacted Transport NI 'several times' about his complaint since 2015. As part of the investigation of the complaint to my Office, Transport NI was asked to provide a record of these telephone calls. Transport NI stated that the other telephone calls (apart from that which took place on 31 July 2015 referred to under issue one) between the complainant and Transport NI were not recorded. It also stated that no separate complaints file was maintained as part of the complaint to Transport NI. In the absence of other evidence, I conclude that these telephone calls did occur, however Transport NI did not retain a record of them. I consider the failure to make a record of the telephone calls between the complainant and Transport NI is contrary to the third Principle of Good Complaint Handling, 'being open and accountable' which requires public bodies to keep 'full and accurate records'. I consider this failing constitutes maladministration.

91. In response to my draft Investigation Report, Transport NI stated there is no requirement on staff to record telephone calls and that it relies on staff *'judgment to identify significant conversations and thence to prepare a file note.'* I accept this is the case; however I consider it is good administrative practice to record all relevant issues and this is reflected in the third Principle of Good Administration, 'being open and accountable'.
92. I consider it is good administrative practice for public bodies such as Transport NI to maintain separate complaints files when issues regarding service are raised by members of the public.
93. While accepting that Transport NI expended time and effort in dealing with the complainant's issues concerning how it had dealt with the four planning applications, the failure to identify his complaint about the service is of concern, particularly as he stated in his email of 25 May 2016 *'I am making a formal complaint'*. This failure denied him access to a clear, structured approach with clear timescale for dealing with his complaint and also meant he was not signposted to my office at the appropriate point. That Transport NI failed to identify his complaint as such is further evidence by staff advising him to seek a meeting with them via the planning authority. By this point it was clear his complaint was how Transport NI had carried out its role as a statutory consultee in the planning process and not about the processing of the planning applications and as such was not an issue for the planning authority. I make an observation that the definition of a complaint within the complaints procedure is narrow. DfI may wish to review the complaints procedure in light of my comments.
94. I am satisfied that as a result of the maladministration I have identified above, the complainant sustained the injustice of uncertainty and frustration as he was denied the opportunity to progress his complaint through the complaints process and be signposted through it. I consider he also sustained the injustice of time and trouble in pursuing his complaint.
95. In response to the draft Investigation Report, the complainant asked that I consider recommending the appointment of an Independent Traffic Commissioner to

undertake a reassessment of these cases. I have considered these comments and I do not consider this would be an appropriate recommendation. He also referred me to a statutory note issued by the Department for Agriculture, Environment and Rural Affairs (DEARA) in May 2018 following a Court judgment, making reference to the cumulative impact of related planning applications, and asked if Transport NI are obliged to follow this. I reiterate my response to him that I am unable to comment on how any Court judgments impact on Transport NI's operations and I suggest he raises the issue with Transport NI.

CONCLUSION

96. The complainant submitted a complaint to my Office about the actions of Transport NI in relation to how it assessed and processed a consultation request regarding a planning application for four proposed developments near his home.

97. I have investigated the complaint and have found maladministration in relation to Transport NI's:

- Failure to provide and record reasons why the four planning applications were considered acceptable
- Failure to provide and record reasons why a detailed Transport Assessment was not deemed necessary and why the transport impact was deemed insignificant
- Failure to provide and record reasons why the accident history was not considered relevant to the four planning applications
- Failure to record discussions with the applicant regarding application B/2013/0043/F (pig breeding unit)
- Failure to treat the complainant's email of 25 May 2016 as a complaint
- Failure to make and retain a record of telephone calls with the complainant

98. I am satisfied that the maladministration I identified caused the complainant to experience the injustice of uncertainty, frustration and upset.

99. I have not found maladministration in respect of the complaint that the only assessments undertaken were for site access and that Transport NI did not consider the following:

- A Transport Assessment in relation to the four planning applications
- The cumulative impact of the four planning applications
- The nature of the materials being transported as part of the proposed development
- Other road users in its assessment of the four planning applications

Recommendations

100. I recommend that the Permanent Secretary of the Department for Infrastructure issues the complainant with an apology for the failings which I have identified above, within **one month** of the date of my final report.

101. In addition, I recommend that Transport NI makes a payment of £350 by way of solatium for redress in respect of the injustice of uncertainty, frustration, upset, and time and trouble within **one month** of the date of my final report.

102. I consider there are a number of lessons to be learned which provide Transport NI with an opportunity to improve its service. I recommended that it implement changes to the process for considering and responding to consultations on planning applications, so that a clear record is made of its consideration of the application and the reasons for its consultation response.

103. I also recommend that Transport NI provide training to relevant staff about the complaints procedure, once it has been reviewed in light of my comments above.

104. I recommend that Transport NI develop an action plan which outlines the steps considered in implementing my recommendation on the consideration of the planning applications and provide me with an update within **three months** of the date of the final report. That action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any

relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies).

105. I am pleased to note that Transport NI have accepted these findings and recommendations.

Marie Anderson

MARIE ANDERSON
Ombudsman

September 2018

Appendix 1

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 2

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

1. Getting it right

- Acting in accordance with the law 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 learned from complaints.
- Including complaint management as an integral part of service design.
- Ensuring staff are equipped and empowered to act decisively to resolve complaints.
- Focusing 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.

2. 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 where appropriate co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

3. 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.

4. 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 and actions 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

5. 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.

6. 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 learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and the changes made to services, guidance or policy.