



Northern Ireland

**Public Services**

Ombudsman

# Investigation Report

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## Investigation of a complaint against Belfast City Council

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**NIPSO Reference: 202000448**

The Northern Ireland Public Services Ombudsman

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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, and 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.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

## **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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**Case Reference:** 202000448

**Listed Authority:** Belfast City Council

## **SUMMARY**

I received a complaint about the actions of Belfast City Council, specifically the Belfast Planning Service, (the Planning Service) regarding its handling of a planning application. This application related to the demolition/removal of the existing, temporary building at Walkway Community Association, 1-9 Finvoy Street and lands between 31 Upper Newtownards Road and Bloomfield Baptist Church, Belfast BT5 5DH, and the subsequent erection of a new two-storey community centre and crèche (the community centre). The applicant was also Belfast City Council (the applicant). Planning permission was granted on 24 February 2020.

The complainant said the details the applicant included in its application for planning permission regarding the expected number of users of the proposed community centre was inconsistent with its proposed size and function. The complainant said the proposal would increase the number of users, which would impact upon the traffic flow in Finvoy Street - and thus the availability of parking for residents in that area. The complainant said the Planning Service had not given sufficient consideration to the parking provision when making its decision.

I obtained all relevant documentation, together with the Planning Service's comments on matters the complainant had raised.

My investigation found the Planning Service obtained responses from the Department for Infrastructure Roads (DFI Roads) in respect of the parking provision, in DFI Roads' role as the statutory consultee with responsibility for parking. My investigation found it was in line with relevant standards for the Planning Service to rely on the advice DFI Roads provided when making its decision on the application.

However, my investigation found maladministration in the Planning Service's record-keeping regarding the decision-making process it applied. Specifically, the Planning Service had failed to ensure the case officer's report was updated with an addendum following receipt of DFI Road's second consultation response, and thus failed to follow its own procedures. This cast doubt on what consideration was given to that

second consultation response when the decision to grant planning permission was made.

This maladministration resulted in the injustice of uncertainty and frustration for the complainant regarding the decision-making process the Planning Service applied to the parking provision in the application. In addition, the complainant had to take the time and trouble of bringing their complaint to my Office.

In the event, DFI Roads did not raise any objections to the proposed development. Therefore, whilst I have identified maladministration in relation to record-keeping, I have not identified any grounds on which I could question the merits of the discretionary decision by the Planning Service to approve the application.

I recommended the Planning Service provide the complainant with a written apology. In addition, for service improvement and to prevent future reoccurrence, I recommended that the Planning Service brings the contents of this report to the attention of staff so they can learn from the failures identified regarding keeping records of decision-making on planning applications in case officer reports. I also recommended that it carries out a general audit of case officer reports with a specific focus on the standards of record-keeping. I further recommended the Planning Service provides me with evidence of having taken these steps, as well as feedback regarding any learnings identified from the general audit of case officer reports.

## **THE COMPLAINT**

1. I received a complaint about the actions of the Belfast Planning Service of Belfast City Council (the Planning Service) in respect of a planning application. The applicant was Belfast City Council also (the applicant), and its agent was an Architects Firm (the applicant's agent). This application was in respect of 1-9 Finvoy Street and lands between 31 Upper Newtownards Road and Bloomfield Baptist Church, Belfast BT5 5DH. It concerned planning permission for the demolition/removal of the temporary Walkway Community Association building, and the subsequent erection of a new two-storey community centre and crèche (the community centre). Planning permission was granted on 24 February 2020.

### **Background**

2. The complainant lives in the vicinity of the community centre. The complainant said the details the applicant included in its application regarding the expected number of users of the proposed community centre was inconsistent with its proposed size and function. The complainant said the proposal would lead to an increase in the number of users of the site, which would result in an increase of traffic flow, and a decrease in parking availability in the vicinity.
3. The complainant made a formal complaint to the Planning Service about its handling of the planning application. The complainant wrote to the Planning Service on 11 January 2021, 2 February 2021 and 4 March 2021 - engaging in each of the three stages of the Planning Service's internal complaints procedure. The complainant remained dissatisfied with aspects of the Planning Service's responses, and so brought forward the complaint to my Office.
4. As set out in Appendix two of this report, the Department for Infrastructure Roads (DFI Roads) is the body with responsibility for advising the Planning Service on matters relating to the parking provision for proposed planning applications.
6. A chronology setting out the events and actions leading up to planning permission being granted is set out in Appendix three of this report. However,

the following are of particular relevance to this complaint:

- 11 July 2019 – Pre-Application Discussion<sup>1</sup> (PAD) was held between the applicant and the Planning Service;
- 5 August 2019 – DFI Roads provided a consultee response to the PAD and advised that a travel assessment form and a parking plan drawing would be required;
- 22 October 2019 – Form P1 Application for Permission to Develop Land<sup>2</sup> was submitted by the applicant to the Planning Service;
- 28 October 2019 – amended Form P1 submitted by the applicant to the Planning Service;
- 15 November 2019 – the applicant provided details of the application to DFI Roads for a consultation response;
- 6 December 2019 – DFI Roads provided its consultee response to the application. DFI Roads deemed the application “*unacceptable*” due to the lack of a travel plan<sup>3</sup> and parking survey<sup>4</sup> – which DFI Roads considered necessary due to the potential for the development to increase demand for on-street parking in the vicinity of the community centre;
- In January 2020 the travel plan was issued to the Planning Service;
- In February 2020 the parking survey was issued to the Planning Service;
- On 11 February 2020 the travel plan and parking survey were published

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<sup>1</sup> An informal discussion held between the applicant and a planning officer prior to a formal application being submitted.

<sup>2</sup> Pro-forma application form required to be used by applicants applying for planning permission in Northern Ireland.

<sup>3</sup> Long-term management strategy for integrating proposals for sustainable travel into the planning process, based on evidence of anticipated transport impacts on development in order to set measures to promote and encourage sustainable travel. Sustainable travel includes the promotion of walking, cycling and use of public transportation.

<sup>4</sup> Assesses the volume of vehicles parked at any one time in the vicinity of the application site – either on-street or in existing car parks – and provides an indication of parking trends and any available capacity that could serve the new development. It is required when there is an identified parking need that cannot be accommodated on the development site, and is used to demonstrate whether there is sufficient parking capacity on public roads or streets to accommodate any additional vehicles generated by the new development.

on the Planning Portal<sup>5</sup>, and were provided to DFI Roads for re-consultation;

- On 11 February 2020 the Planning Service presented the Development Management Officer's Report<sup>6</sup> (the Planning Report) to the Planning Committee<sup>7</sup>. This report recommended the application be granted subject to conditions – including any conditions which may be imposed by DFI Roads following its assessment of the travel plan and parking survey;
- On 17 February 2020 DFI Roads provided its further consultee response to the application. No objection was raised in respect of the application, but DFI Roads requested the travel plan be implemented and the covered cycle parking set out in the application be provided; and
- On 24 February 2020 planning permission was granted – with the Notice of Approval of Planning Permission citing that the travel plan be implemented, and the covered cycle parking set out in the application be provided.

## **Issue of Complaint**

5. The issue of complaint accepted for investigation was:

**Was the Council's consideration of the parking provision in respect of the planning application reasonable, appropriate and in line with required standards?**

## **INVESTIGATION METHODOLOGY**

7. In order to investigate this complaint, the Investigating Officer obtained from the Planning Service all relevant documentation together with the planning documentation relating to the application. I have set out relevant extracts from

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<sup>5</sup> Online portal collating information and documentation relating to planning matters in Northern Ireland – and which can be accessed at <https://epicpublic.planningni.gov.uk/publicaccess/>.

<sup>6</sup> Report that recommends approval or refusal of an application for planning permission. It contains information relevant to the application including details of material considerations taken into account, and the rationale for the recommendation made.

<sup>7</sup> The Planning Service body responsible for granting or refusing planning permission.



these in Appendix four of this report. The investigation considered evidence relating to the Planning Service's actions in relation to the application, as well as the Planning Service's responses to the formal complaint the complainant submitted to it.

8. Given that the complaint concerns decisions the Planning Service made in relation to the application it is important I emphasise that the 2016 Act, which governs my role, empowers me to investigate the administrative actions of the public authorities in Northern Ireland. The 2016 Act does not authorise or require me to question the merits of a discretionary decision taken by a public authority, unless an investigation discloses evidence that there was maladministration in the process by which that decision was reached.
9. I have not included in this report all of the information that was obtained in the course of the investigation, but I am satisfied that everything I consider to be relevant and important has been taken into account in reaching my findings.
10. A draft of this report was shared with the complainant and the Planning Service for comment on its factual accuracy and the reasonableness of the proposed findings and recommendations. I gave careful consideration to the comments I received from both the complainant and the Planning Service, before I finalised this report.

### **Relevant Standards**

11. 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.

The general standards are the Ombudsman's Principles:<sup>8</sup>

- The Principles of Good Administration.

12. The specific standards are those which applied at the time the events complained of occurred, and which governed the exercise of the administrative functions of the public authority whose actions are the subject of this complaint.

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<sup>8</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

13. The specific standards relevant to this complaint are:
- The Planning Act (Northern Ireland) 2011 (the 2011 Act);
  - The Planning (General Development Procedure) Order (Northern Ireland) 2015 (the GDP Order);
  - The Planning (General Development Procedure) (Amendment) Order (Northern Ireland) 2016 (the GDP Amendment Order);
  - The Department for Infrastructure's (DFI) The Strategic Planning Policy Statement for Northern Ireland, 2015 (the SPPS);
  - The Planning Service's Planning Policy Statement 3 – Access, Movement and Parking, revised 2005 (PPS 3);
  - The Planning Service's Parking Standards, revised October 2019 (Parking Standards);
  - The Department for Infrastructure's (DFI) Development Management Practice Note 16 – The Determination of Planning Applications, 2015 (Practice Note 16);
  - The Department for Infrastructure's (DFI) Development Management Practice Note 18 – The Consultation Process and Duty to Respond, Version 2, 2016 (Practice Note 18); and
  - The Northern Ireland Public Services Ombudsman (NIPSO), the NI Audit Office and Information Commissioner's Office (ICO) published standard: Records Matter, a View from Regulatory and Oversight Bodies on the Importance of Good Record Keeping, January 2020 (joint Published Standard).

Under the Planning Act (Northern Ireland) 2011 (the 2011 Act) and the Planning (General Development Procedure) Order (Northern Ireland) 2015, as amended, (the GDP Order) the Planning Service is required to take into account material considerations<sup>9</sup> when determining a planning application. Material considerations include consultee responses from bodies identified as statutory consultees in the amended GDP Order. Regarding parking provision specifically the relevant statutory body is DFI Roads.

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<sup>9</sup> All the fundamental factors involved in land-use planning.

The relevant sections of the above standards are included in Appendix two to this report.

## **THE INVESTIGATION**

**Was the Council's consideration of the parking provision in respect of the planning application reasonable, appropriate and in line with required standards?**

### **Detail of Complaint**

14. The complaint relates to the Planning Service's consideration of the parking provision in respect of the application when the Planning Service made the decision to grant planning permission for the community centre.
15. In particular, the complainant said:
  - the proposed plans would increase the size of building from 332m square to 641m square, but the application said there would not be an increase in the number of people using the community centre, and that only one goods vehicle would be accessing the site on a daily basis; and
  - the proposed plans included the relocation of a day-care centre from its site "200 metres" away to the proposed community centre, but with no increase in the number of people using the building. The complainant said that day-care centre has 14-16 children and six staff members, and challenged the applicant's position that the previous site was within 200 metres of the proposed community centre.
16. The complainant considered that the proposals would increase the number of users of the community centre. The complainant said this would increase the traffic flow in Finvoy Street and reduce the parking provision - and therefore the availability of parking for residents in that area, which included the complainant. The complainant said this had not been considered when the Planning Service handled the application.

## Evidence Considered

17. I refer to the following policies and guidance which were considered as part of investigation enquiries:

- The 2011 Act;
- the GDP Order;
- the GDP Amendment Order;
- The SPPS;
- The PPS 3;
- Parking Standards;
- Practice Note 16;
- Practice Note 18; and
- Joint Published Standard.

## The Planning Service's response to investigation enquiries

18. The Planning Service stated that in regards to "*transport planning considerations*" it relies on the "*expert advice*" of DFI Roads in its role as a statutory consultee under the 2011 Act and the GDP Order, as amended.
19. The Planning Service stated DFI Roads provided two consultation responses to the application, dated 6 December 2019 and 17 February 2020. The Planning Service said that in the first response, DFI Roads outlined the need for a travel plan and parking survey to be obtained – and that these were subsequently obtained and provided to DFI Roads for re-consultation. The Planning Service stated the travel plan and parking survey said there was "*adequate parking capacity in the area*", and that the community centre was on an "*arterial route*" into Belfast city centre with easy access to public transport, including the Glider.
20. The Planning Service went on to say that DFI Roads had access to these

documents when providing its second response, and that in it, DFI Roads did not raise any objections to the application.

21. The Planning Service said “*significant weight should be afforded to the views of statutory consultees*” and that “*unless the Council has robust technical evidence to the contrary, it should accept the professional advice given by DFI Roads, the transport authority for Belfast*”.
22. The Planning Service stated DFI Roads’ “*final response was taken into consideration at the point that the decision was made*”. It went on to say that the application, and all material matters, were assessed - and that the decision to grant planning permission was a “*well-considered one*”.
23. The Planning Service acknowledged in its response to my Office that the Planning Report was not updated on receipt of the final submission from DFI Roads. It stated, however, that it did not consider it necessary to have done so on the basis that the Committee had “*resolved to grant planning permission with the final wording of conditions delegated to officers*” – which included any conditions which may have been imposed by DFI Roads following their re-consultation.
24. The Planning Service further stated to my Office it would not have been possible for it to have updated the Planning Report after the Committee Meeting on 11 February 2021, as at this stage it was a “*matter of record*” within the context of the Committee Meeting. The Planning Service stated it would have been possible for an addendum report to have been produced and filed. However, the Planning Service did not consider it necessary to have done so on this occasion as the Committee were “*content*” the Planning Report stated consideration would be given to any conditions DFI Roads may have imposed in its second consultation response.
25. In respect of the complainant’s position that the previous site for the crèche was more than 200 meters away from the community centre, the Planning Service said this statement was made by the applicant’s agent rather than the Planning Service – and that the application being granted does not mean that this specific statement on the agent’s part was accepted. The Planning Service

went on to say that in any event, DFI Roads raised no objection having reviewed the application as a whole, including the travel plan and the parking report. In respect of the complainant's position regarding the potential for an increase in the number of users to the community centre, the Planning Service reiterated that DFI Roads raised no objections, having reviewed the planning application. The Planning Service's position was that if the complainant had concerns regarding the advice DFI Roads provided, those concerns were best raised with DFI Roads directly.

## **Analysis and Findings**

26. The complainant said the Planning Service had given insufficient consideration to the potential for an increase in private car usage in the vicinity of the community centre, given the planned increase in floor space for the centre and the addition of a crèche – and the impact this may have on parking availability in that area for nearby residents.
27. The Planning Service's position was it had given full consideration to the application and the material considerations associated with it before making its decision to grant planning permission. The Planning Service stated it consulted with DFI Roads regarding the parking provision in line with the 2011 Act and the GDP Order, as amended – and considered DFI Roads' consultation response dated 17 February 2020 before making its decision. The Planning Service's position was it was entitled to accept the advice of DFI Roads regarding the parking provision, as the statutory consultee and expert in the matter of parking.
28. *Section 45(1)* of the 2011 Act (set out in Appendix two to this report) requires the Planning Service to have regard to material considerations when dealing with a planning application. This duty is echoed in *Paragraph 4.7* of Practice Note 16 (also set out in Appendix two to this report), which the Planning Service must also take into account when making decisions.
29. Whilst material considerations are not defined in the 2011 Act, *Paragraph 3.3* of Practice Note 18 (set out in Appendix two to this report) states that statutory consultee responses must be taken into account as material considerations

when forming an opinion on a planning application. *Section 4(a) of Part 1 of Schedule 3* of the GDP Order, as amended, (also set out in Appendix two to this report) sets out that DFI Roads is the statutory consultee in planning matters in respect of parking provision.

30. In addition to legislative obligations, the Planning Service's consideration of parking provision is also subject to the strategic objectives set out in the SPPS. *Paragraph 6.297* of the SPPS (set out in Appendix two to this report) states the Planning Service should promote developments which reduce the need for private car use, and which encourage and facilitate the use of public transport. The SPPS further sets out the Planning Service should promote parking policies that seek to meet that strategic objective. This strategic objective is also reflected in the Planning Service's own Parking Standards.
31. The Planning Service must also consider the PPS3 in respect of parking. *Policy AMP7* of the PPS3 (set out in Appendix two to this report) states a reduction in parking available in the vicinity of a development may be acceptable where the site is in a highly accessible location which is well served by public transport, and where there is parking provision nearby in public car parks or on adjacent streets.
32. *Paragraph 4.17* of Practice Note 16 (set out in Appendix two to this report) states the Planning Service must take into account all relevant considerations, and is responsible for determining how much weight should be applied to each in reaching a decision on a planning application. That paragraph further states the Planning Service must not rely on any one material consideration to the extent that others are "*displaced*". This obligation is echoed in *Paragraph 3.3* of Practice Note 18 (also set out in Appendix two to this report).
33. *Paragraph 4.2* of Practice Note 18 (set out in Appendix two to this report) also states that responses from statutory consultees must be critically examined, and that consideration of the advice provided "*should be documented and considered in the case officer report before a decision is taken*".
34. Having examined the full planning file in detail, I am satisfied the application does set out that the proposed floor space for the community centre would

increase from 332m<sup>2</sup> to 641m<sup>2</sup>, and that the number of users of the centre was proposed to remain the same. Details of the proposed introduction of a crèche to the community centre were also set out in the application. I am also satisfied this information was available for scrutiny by the Planning Service and by the statutory consultees. The applicant's agent's statement that the crèche was being transferred from a location 200m from the community centre was also available for consideration, but it is noted that consideration of this was not reflected in the Planning Report. The issue of the crèche distance will be addressed in further detail later in this report.

35. Regarding consultation, I am satisfied the Planning Service sought a consultation response from DFI Roads on two occasions following the submission of the application by the applicant. The first was sought on 15 November 2019 and was received on 6 December 2019. That first response required a travel plan and parking survey to be obtained in respect of the application. These were obtained and submitted to DFI Roads for the second, further consultation on 11 February 2020. In doing so, I am satisfied the Planning Service met its obligations under *Section 45(1)* of the 2011 Act and *Schedule 3* of the GDP Order, as amended, to seek a consultation response from DFI Roads as part of the consideration process.
36. I note Planning Service's position that whilst it may be correct that the crèche is not exactly 200 meters from the community centre, the impact of the crèche integrating into the community centre was available to DFI Roads when advice was sought. Under *Section 45(1)* of the 2011 Act and *Schedule 3* of the GDP Order, as amended, it was the role of DFI Roads to advise on the potential impact of the proposed application on traffic flow and parking provision in the vicinity of the community centre. It was then the Planning Service's role, under *Paragraph 3.3* of Practice Note 18, to exercise its discretion in applying weight to that advice, within the context of the application as a whole. I am satisfied that, in terms of the increased floor space and introduction of a crèche from a nearby location, it was in line with relevant standards and legislation for the Planning Service to accept the advice of DFI Roads regarding the parking provision when deciding upon the application.



37. I acknowledge the complainant's position regarding the details in the application relating to the increase in floor space and the introduction of the crèche, together with the applicant's position that the number of users of the community centre was not proposed to increase. I further acknowledge the complainant's concerns about the impact any increased usage may have on the availability of parking in the vicinity of the community centre. However, the provision of advice on this matter fell under the remit of DFI Roads, and it was in line with relevant standards for the Planning Service to exercise its discretion in weighing up that advice in the context of the application as a whole.
38. In terms of the consideration the Planning Service gave to the responses from DFI Roads, I refer to the first DFI Roads consultation response. I am satisfied the Planning Service took that response into account as part of its consideration of the parking provision, as it complied with the requirements set out in it to obtain and provide additional information in the form of the travel plan and parking survey – which were also uploaded onto the Planning Portal. I am further satisfied that this step in the consideration process was recorded in the Planning Report.
39. Regarding the second DFI Roads consultation response, I note the Planning Service submitted its consultation request on the same day the Planning Report was submitted to the Committee for consideration. Regarding the parking provision specifically, the Planning Report states "*a Travel Plan requested by DFI Roads to be submitted by the applicant remains outstanding at the time of writing this report. The site is considered to be in a highly accessible, sustainable location. Upon receipt of the information DFI Roads will be re-consulted and conditions imposed if necessary*". It also states that "*this information was awaiting submission at the time of this report and on receipt will be forwarded to DFI Roads for re-consultation.*" I am satisfied that re-consultation was sought, and was then received by the Planning Service on 17 February 2020 and uploaded onto the Planning Portal that day. This was in advance of planning permission being granted on 24 February 2020.
40. I note, however, the Planning Report was not updated following the Planning Service's receipt of DFI Roads' further consultation response. It was not

updated before the Planning Service's decision was issued on 24 February 2020, and had not been updated at the issue date of the draft of this report. The Planning Service has acknowledged this in its response to this Office. It has stated that the detail provided in the Planning Report about the second consultation response being sought is sufficient for the purposes of documenting that this material consideration was taken into account in the decision-making process.

41. As I explained at the beginning of this report, I am not authorised or required to question a discretionary decision taken by a public body within my jurisdiction (such as the Planning Service's decision to approve the application) unless I find evidence of maladministration in the process by which the decision was reached. Consequently, while I am not in position to substitute my judgement for that of the Planning Service and therefore conclude whether or not it was appropriate for it to approve the application, I can examine the process by which that decision was made.
42. In this case, having considered the evidence available to me, I am of the view that some aspects of process, by which the Planning Service reached its decision on the application, fell short of the standards required by the Principles of Good Administration. The reasons for my view are set out below.
43. Whilst I note the Planning Service's position regarding the Planning Report, I am not satisfied that the requirements of *Paragraph 4.2* Planning Note 18 (set out in Appendix 2 to this report) were met in terms of the second consultation response from DFI Roads. The Planning Report, whilst appearing on the Planning Portal, has not been updated since 11 February 2020. Therefore, it does not document what consideration, if any, was given to the second consultation response. As a result, it cannot be determined whether or not the Planning Service took account of this material consideration, as required by *Paragraph 3.3* of Planning Note 18, as well as *Section 45(1)* of the 2011 Act. I accept the Planning Service's position that it would not have been possible or appropriate for the Planning Report discussed at the Committee Meeting on 11 February 2020 to have been subsequently changed or updated, as it formed part of the record of that meeting. However, I consider it would have been

possible and appropriate for an addendum report to have been prepared and filed after the Planning Service received the second consultation response from DFI Roads, and before the decision to approve planning permission was made.

44. I note Planning Service's position that it did take this second response into account before deciding to grant planning permission. The Planning Service pointed to its Decision Sign-Off Checklist, signed by the Case Officer on 17 February 2020 and by an Authorised Officer on 24 February 2020, in support of its position that it considered the second consultation response.
45. Whilst I accept that the Checklist demonstrates that a final decision on the application was not made until the second consultation response had been received from DFI Roads, it does not provide any record of the response being considered within the context of the application as whole. It records the decision, but not the decision-making process adopted. The Notice of Approval of Planning Permission records that the travel plan be implemented, and the covered cycle parking set out in the application be provided. These were set out in the second DFI Roads consultation response, but not reflected in the Planning Report. I consider this should have been documented in an addendum report to that Planning Report.
46. As such, I consider the information in the Planning Report, in its published state, regarding the parking provision sets out a record of the Planning Service's intentions, rather than a record of its reasons for decision-making.
47. The first Principle of Good Administration, "*getting it right*", requires a public body to adhere to its own policy and standards, and to take account of established good practice. It is evident that the Planning Service failed to follow its own procedures and good practice with regard to recording information about its consideration of the second DFI Roads consultation response.
48. The third Principle of Good Administration requires public bodies to be 'open and accountable' in providing honest, evidence-based explanations, giving reasons for its decisions, and keeping full and accurate records. This principle underscores the need for records of decisions to be created and maintained by a public body. This is a key principle of good administration. To comply with this

principle adequate and contemporaneous records must be retained of matters considered by the public body, decisions made and the reasons for the decisions including the weight given to relevant factors. Without such records being maintained it is impossible for public bodies to defend its actions and the decisions it makes when challenged. It can also have the effect of diminishing the public's confidence that decisions made are not arbitrary and outside of due process. In addition, the Joint Published Standard outlines reflects the position set out in this Third Principle regarding the importance accurate record-keeping. I accept that the Planning Service's decision was a discretionary one. However records such as a Planning Report should be maintained in such a way that allows others to clearly follow the decision making process. I consider that in clearly failing to record what consideration, if any, was given to the second DFI Roads consultation response before making its decision, the Planning Service failed to meet the standards required by the third Principal, as well as the requirements of *Paragraph 4.2* of Practice Note 18.

49. I note the Planning Service's position that to have produced an addendum report in this case would have been disproportionate, and an ineffective use of resources. However, in the interests of clarity and transparency, I consider it to be of the utmost importance for public authorities to keep accurate and accessible records of its decision-making. It is unreasonable to expect members of the public to infer the Planning Service's decision-making from the various documents uploaded onto the planning portal entry – particularly where Planning Note 18 requires this decision-making to be addressed in a single document.
50. I consider the failings identified to constitute maladministration.
51. In the event, the second consultation response from DFI Roads provided no objection to the application, only requesting that the travel plan be adopted, and the covered cycle parking set out in the application be put in place. Awareness of this was reflected in the Notice of Approval of Planning Permission. On that basis I am satisfied that, on balance, the decision to grant planning permission would have been the same, even if the maladministration identified had not occurred. It is evident that DFI Roads were satisfied with both the traffic flow

and parking provision elements of the application, once in possession of the travel plan and parking survey. DFI Roads provided advice on this basis to the Planning Service, and under *Paragraph 4.17* of Practice Note 16 it was within the Planning Service's discretion to determine the weight to be applied to that advice.

52. Nonetheless, I consider that the complainant sustained injustice as a result of the Planning Service's failings in relation to this complaint. The complainant sustained the injustice of uncertainty and frustration regarding the decision-making process the Planning Service applied to the parking provision in the application. In addition, the complainant had to take the time and trouble of bringing her complaint to my Office. The injustice is not as a result of the decision to grant planning permission but because of the doubt it created about the process.

## **Conclusion**

53. I received a complaint about the consideration the Planning Service gave to the parking provision in respect of the application.
54. The investigation established that it was in line with relevant standards for the Planning Service to have accepted the advice of DFI Roads regarding the parking provision, given DFI Roads' status as a statutory consultee under the *Section 229(1)* of the 2011 Act (set out in Appendix two to this report) and *Schedule 3* of the GDP Order, as amended.
55. The investigation also established however, that there was evidence of maladministration on the Planning Service's part in respect of keeping a clear and accurate record of its decision-making process regarding the second advice response received from DFI Roads in the Planning Report – and in respect of following its own standards.
56. This resulted in the injustice of uncertainty and frustration for the complainant, as well as the time and trouble of bringing this complaint to my Office.
57. The complaint is therefore upheld.

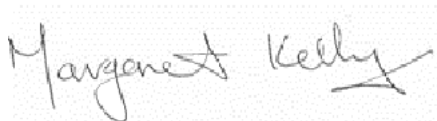
58. Notwithstanding my criticism of the Planning Service's record-keeping, I am satisfied that, on balance, the decision on the application would have been the same as if the Planning Service had kept proper records of the basis of its decision – and had demonstrated that it had taken account of the second DFI Roads consultation response.

## Recommendations

59. I recommend that within **one month** of the date of this report, the Planning Service provides the complainant with a written apology, made in accordance with NIPSO's '*Guidance on issuing an apology*', for the injustice caused as a result of the maladministration identified.

60. In addition, for service improvement and to prevent future reoccurrence, I recommend that the Planning Service implement the following:

- (i) brings the contents of this report to the attention of Planning Service staff so they can learn from the failures identified in the report regarding the keeping records of decision-making on planning applications in case officer reports, in line with Planning Note 18;
- (ii) carries out a general audit of case officer reports with a specific focus on the standards of record-keeping, in line with Planning Note 18 – and provides me with feedback in respect of any learning identified from that general audit; and
- (iii) provides me with evidence of having taken these steps within **three months** of the date of my final report.



**MARGARET KELLY**  
Ombudsman  
14 December 2022

## 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.



## 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.