



Northern Ireland

**Public Services**

Ombudsman

# **Investigation of a complaint against Mid & East Antrim Borough Council**

**Report Reference: 202002603**

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:** 202002603

**Listed Authority:** Mid and East Antrim Borough Council

## **SUMMARY**

I received a complaint about the actions of Mid and East Antrim Borough Council (the Council). The complaint related to how the Council considered a planning application it received on 14 July 2021.

In considering the complaint, I established maladministration in relation to the:-

- Acknowledgment of the complainant's submissions dated 9 and 15 December 2021;
- Publishing the complainant's addendum, dated 15 December 2021 on the Planning Portal;
- Obtaining floor plans for the existing garage;
- Recording of rationale regarding the decision not to obtain floor plans;
- Recording the decision making process in respect of consideration of the Addendum to PPS 7 and objections received;
- Provision of information to the Planning Committee in relation to the size of the existing garage and the comparison of the existing of proposed footprints; and
- Allocation of speaking time to the complainant's wife at the Planning Committee.

I did not establish maladministration in relation to the:-

- Follow-up communication between the Planning Service and the complainant's wife;
- The timing of the Planning Service to recommend approval of the application;
- Openness and transparency of the processing of the application;
- Provision of information to the Planning Committee in relation to the description of the eastern boundary of the site and references to planning policy; and
- Questioning of the complainant during the Planning Committee.

I recommended that the Council apologise to the complainant for the failures identified. I also recommended actions to ensure service improvement and to prevent future recurrence. The Council accepted the findings of my report.

## THE COMPLAINT

1. I received a complaint about the actions of Mid and East Antrim Borough Council (the Council). The complainant raised concerns about the Council's consideration of a planning application it first received on 14 July 2021.

### Background

2. On 14 July 2021 the Council's Planning Service<sup>1</sup> received an application for a replacement domestic garage. The complainant, who resided in the neighbouring property, submitted to the Council his objections to this application. The Planning Service received additional objections from other parties. On 2 September 2021 the Planning Service advised the applicant it would likely refuse planning permission based on the information submitted. This was because the proposed garage was not characteristic of a domestic garage and did not comply with the relevant planning policy. The Planning Service provided the applicant with the opportunity to resubmit information to address concerns raised and it received a final set of amended plans on 12 November 2021. The Planning Service re-notified relevant neighbouring properties that it had received amended plans and the complainant and other neighbours submitted further objections.
3. The Planning Service considered the amended plans and recommended approval of the application in its report to the Council's Planning Committee<sup>2</sup> on 10 February 2022. The Planning Committee approved the application, and the applicant received his formal planning approval on 16 February 2022.

### Issue of complaint

4. I accepted the following issue of complaint for investigation:  
**Whether the Council considered the planning application it received on 14 July 2021 in accordance with relevant legislation, policies, and procedures.**

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<sup>1</sup> Service within the Council that processes planning applications, prepares Development Plans, prepares policies and enforces planning control.

<sup>2</sup> One function of planning committee is to determine planning applications or to decide upon or vary appropriate conditions, limitations, terms or other restrictions upon any approval, consent or permission granted and/or agree reasons for refusing consent.

## INVESTIGATION METHODOLOGY

5. In order to investigate this complaint, the Investigating Officer obtained from the Council all relevant documentation together with its comments on the issues the complainant raised. This documentation included information relating to the Council's complaints process.

### Relevant Standards and Guidance

6. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those specific to the circumstances of the case. I also refer to relevant regulatory, professional, and statutory guidance.

The general standards are the Ombudsman's Principles<sup>3</sup>:

- The Principles of Good Administration

7. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- The Planning Act (Northern Ireland) 2011 (2011 Act);
- The Planning (General Development Procedure) Order (Northern Ireland) 2015 (GDP Order);
- The Department of the Environment's, Addendum to Planning Policy Statement 7, Residential Extension and Alterations, March 2008 (Addendum to PPS 7); and
- Mid and East Antrim Borough Council's, Protocol for Operation of Planning Committee, May 2021 (Council's Committee Protocol).

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

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

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 the public body reached that decision.

9. I did not include all information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.
10. A draft copy of this report was shared with the complainant and the Council for comment on factual accuracy and the reasonableness of the findings and recommendations.

## **THE INVESTIGATION**

**Whether the Council considered the planning application it received on 14 July 2021 in accordance with relevant legislation, policies, and procedures.**

### **Detail of Complaint**

11. The complainant raised the following concerns:-
  - The Planning Service failed to acknowledge his objection letter dated 9 December 2021. It also did not publish his addendum, dated 15 December 2021, on the planning portal<sup>4</sup>. The addendum outlined information on relevant planning policies.
  - The complainant's wife attempted to contact the Case Officer on at least two occasions during October to December 2021, and on up to three occasions from early January 2022 to 2 February 2022. He said the Case Officer did not respond to his wife until 2 February 2022 after a further email request to her.
  - The Planning Service failed to appropriately apply planning policy. It instead applied '*...personal opinion and prejudice...*' which conflicted

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<sup>4</sup> System used by the council to submit, view and comment on planning applications online.



with objectors' views. The process lacked '*...transparency...*' as well as '*...impartially and fairness...*'

- The Planning Service recommended approval of the application prior to 14 December 2021. This was before the submission of at least seven letters of objection, which the Planning Service gave no consideration to; and
- The Planning Service provided inaccurate and incomplete information to the Planning Committee which failed to address objectors' concerns. In particular, the size of the existing structure presented; its consideration that the replacement structure was of a similar footprint to the existing structure; that the eastern boundary of the site was defined by agricultural land, and the presentation, did not refer to planning policy.
- The Planning Committee denied him a '*...fair and public hearing...*' The Chair did not allow him the maximum time allowed to present his case, and a member of the Planning Committee put into doubt his honesty in relation to the measurements he presented.

## **Evidence Considered**

### **Legislation/Policies/Guidance**

12. I considered the following legislation/policies/guidance:

- The 2011 Act;
- The GDP Order;
- Addendum to PPS 7; and
- The Council's Committee protocol.

### **Council's response to investigation enquiries**

*Acknowledgment of objection letter and addendum, publication of addendum and, follow-up communication*

13. The Council said: it published the complainant's letter of objection dated 9 December 2021. It did not publish the complainant's addendum dated 15 December 2021. This was an '*oversight*' for which it apologised. It was not aware it '*ignored*' any correspondence from objectors. There may have been delays with it acknowledging such correspondence. However, this may have

been due to staff's limited access to the office due to the Covid pandemic, which impacted 'service delivery'.

#### *Application of planning policy*

14. The Council said: it made the decision on this application in '*...an open and transparent manner...*' at the Council's Planning Committee. It advertised the application, notified neighbours, '*...carefully considered...*' objection letters and, afforded speaking rights to objectors at the Planning Committee. There had been no prejudice in the processing of this application...'
  
15. The Council said: it considered the original application unacceptable in principle as the scale and massing of the proposal '*...was excessive...*'; would '*...appear unduly conspicuous...*' detracting from the character of the area and, '*...appear visually obtrusive...*' which would '*...negatively affect the residential amenity of neighbouring properties...*' The proposal's relationship to the adjoining dwelling was '*...considered inappropriate...*' The amended plans, received on 12 November 2021, were considered '*...acceptable as the height and footprint of the proposed building was reduced, a timber fence and wall was added to help screen the building and the ground level dropped by 1.60 metres. Cumulatively these amendments adequately addressed the concerns regarding the excessive size of the replacement building and its unacceptable visual impact.*'
  
16. In relation to the existing garage the Council said: it did not confirm the size of the garage as '*...the impact of the original garage was not under consideration...*' It did not consider requesting floor plans as, '*...they were not required to make an informed decision, and to request such plans would be disproportional...The planning assessment related to the impact of the proposed garage...*' However, it confirmed the measurements of the existing garage, detailed in the Council report, '*...were taken from the submitted location map...the site was formally inspected on the 19 October 2021...The plans date stamped 14 July 2021 show details of the existing shed. The site inspection...confirmed what was on the ground.*' The Council also provided the following details in relation to the proposed garage:

- Size of garage shown on plans dated 19 July and 24 September 2021  
Length 13.7m, Width 10.6m, Ridge Height 6m
- Size of garage on plans dated 12 November 2021  
Length 12m, Width 10m, Ridge Height 5m.

17. The Council said: the complainant, on 9 December 2021 submitted information '*...detailing their perception of the proposed shed...*' The Case Officer used additional information (from the agent) on the visual representation of the proposal, together with photographs, plans and site inspections to make an '*...informed assessment...*' about the impact of the proposed garage. It was the Case Officer's view this information was '*...sufficient ...*' to make the assessment.

*Timing of determination of planning application*

18. The Council said: it did not determine the application prior to '*...neighbours objections being considered...*' Due to the level of objections the application it referred to the Planning Committee who made the final decision on the application.

*Provision of information to planning committee and conduct of planning committee*

19. The Council said: at the Planning Committee, the Planning Officer presented '*...a brief overview of the proposed development...*' including '*...a description of the site and the proposed development...*' It did not deliberately intend to mislead the Planning Committee. It provided the Planning Committee with a Committee report which '*...provided a summary of the objections...*' However, members of the Planning Committee could review, if they so wished, objection letters as these were publicly available on the Planning Portal. It accepted that it did not upload the complainant's addendum, dated 15 December 2021, to the planning portal and this was '*...an oversight...*' However, the addendum, although not referenced in the Case Officer's report, the Case Officer was fully aware of the complainant's objections and these were considered. This was evidenced by the fact that Human Rights concerns raised in the addendum were '*... dealt with in Section 8 of the Officer's Report...*' The complainant

*'...had registered speaking rights and attended the Planning Committee... and therefore had the opportunity to rebut any points of disagreement...'*

20. In relation to the Case Officer's report for the Planning Committee, the Council was asked to provide evidence to indicate the Case Officer's rationale and decision making process in respect of considering, the issues raised by objectors raised and, relevant planning policy. It said: the Case Officer's report is *'...a general consideration of the issues raised presented in a proportionate manner...'* with no legal requirement to list each objection. The report refers to the relevant planning policy *'...for example, under Section 7 Consideration and Assessment Policy EXT 1 of the Addendum to PPS 7 is referenced.'*
21. The Council also provided information about the PowerPoint presentation presented to the Planning Committee and said: it was *'...a general overview...'* It does not need to include all the drawings etc as *'...there is no legal requirement to do so...'* and case officers use *'...their professional judgement...'* in such instances. Drawings and other *'technical information'* are published on the Planning Portal and therefore available for Committee Members and others to inspect.
22. The Council commented on what the complainant believed to be inaccuracies presented to the Planning Committee. It said: *'...Given that there is no development to the east of the site, the description...'* defined by agricultural land *'...is a fair and reasonable representation.'* The measurements of the existing garage *'...were taken from the submitted location map...'* and explained *'...the proposed garage does sit on the footprint of the existing Nissen shed to the rear of the host property.'*

### **Relevant Council and Complainant records**

23. I considered the records the Council and complainant provided.

## Complainant's response to draft report

### *Follow-up communication*

24. The complainant disagreed with the Council's response and said '*...email and telephone services were not generally affected by Covid...*' He believed the Council could easily have forwarded correspondence to home workers. He also queried why the Council would not enter into correspondence with objectors given they are rate payers.

### *Application of planning policy*

25. The complainant disagreed with the Council's comments that '*...there had been no prejudice in the processing of the application...*' He said the Council's handling of the case showed otherwise.

#### i Request for floor plans

26. As the application was for a replacement structure, the complainant believed the size of the original structure was very relevant. He said this would have enabled a comparison and adherence to the provisions of PPS7 and was '*...therefore a crucial factor and one that a proper professional would have recorded.*' He also said the Planning Service should have taken measurements from the existing garage on site or either from original, official Ordnance Survey (OS) maps or Land Registry maps, and not the location map provided. This is because '*...it is impossible to make a correct measurement...*' from the location map '*... due to the fact that the existing shed is represented by a [sic] amateurishly added dashed line that is not part of the original OS map...*'

27. The complainant commented on the measurements the Council provided at paragraph 16. He said the amended plans had an area of 120m<sup>2</sup> in comparison to 56m<sup>2</sup> of the existing shed with the proposed footprint '*...more than twice that of the existing shed...*' and an eaves height of '*...at least 1.5 times that of the dwelling house.*' He further said the difference in size between the initial and amended plans '*...only represented a mere 17% reduction...*'

#### ii Consideration of policy criteria and objections

28. The complainant disagreed with the Council that the amended application addressed concerns over the size and visual impact of the replacement garage, as *'...reductions in size were minimal...'* and involved *'...considerable excavation...and little reduction on visual impact...'* and re-iterated that the residents did not find the amended application acceptable. He referred to the case officer's notes of the Group meeting on 4 January 2022 that there was *'...Little impact on neighbours...'* and said *'...This is a matter of opinion and NOT based on fact or residents [sic] perceptions.'*
29. The complainant raised concerns about the Case Officer's site visit as well as her overall assessment and queried if the assessments was *'...merely based on the weighted information from the agent?...'* He also commented on the Case Officer's report presented to the Planning Committee and said this was *'...only an opinion and not factual...'* with *'...The summary was heavily weighted in favour of the applicant...'* The complainant also noted the Case Officer was not questioned by the Planning Committee and disagreed the process of considering the application was transparent.
30. The complainant re-iterated his views that the application did not meet the guidelines set out in the Addendum to PPS 7 as it *'...is not sympathetic with the existing house and will detract from the appearance of the surrounding area...It does affect the amenity of neighbouring residents that use the lane...Not only is the proposal over twice as large as the existing shed, it is larger than the house itself...'* The use of metal cladding on the structure of such a size *'... would have more of the appearance of an agricultural, industrial or other non-domestic building.'* He believed that the policies and be re-interpreted *'...to suit [the Planning service] and the applicant...'* The complainant was also concerned that the condition of use placed on the planning approval would not be enforced, and the applicant would use the garage for whatever she sought fit. He also said the judgment of planning officers *'...was neither professional nor based on facts...'* and the discretionary decision *'...was flawed as a result of this.'*

*Timing of determination of planning application*

31. The complainant re-iterated his concerns that it would have been unlikely that the MP would have relayed any information regarding the application without some prior discussion (either formally or informally with Council staff). He confirmed, it was because of the MP's email to him, that led him to believe that the Council had granted the application. The complainant provided clarification on the role of the MP and advised he had only represented him initially, due to another matter, and said the MP was also representing the applicant in relation the application.

*Provision of information to planning committee and conduct of planning committee*

32. The complainant disagreed with the Council's comments at paragraphs 19 and 22 regarding the information provided to the Planning Committee. He did not consider it fair or reasonable to describe the east of the site as being '*defined by agricultural land*' as '*...There is approximately 12m between the boundary and the agricultural land...(which includes a 4m lane, a narrow stream and a further 4m wide strip of land)...most of which is an amenity area for users...and access for a number of resident...of the neighbouring dwellings.*' He further believed the aerial photograph confirmed this description.
33. The complainant disagreed with the measurements provided to the Planning Committee. The Principal Planning Officer '*...stated that the shed was approximately 12m x 6m when it is only 11m x 5m...*' He also stated '*...the proposed garage will be on a similar footprint to that of the Nissen hut*'. *The footprint of the Nissen hut or shed is about 55m<sup>2</sup> whereas the proposed structure is over twice this area at 120m<sup>2</sup>...*
34. The complainant did not believe the Case Officer's report, was presented in a proportionate or fair manner to the Planning Committee. He considered the report to be '*...mere opinion weighted in favour of the applicant.*' and did not consider the impact of such a development to the surrounding area. He disagreed with the comments within the report that said the '*...policies contained within Policy EXT1 of the Addendum of PPS 7 have been fulfilled...*' and in particular highlighted Policy EXT 1 paragraphs a and b and Annex A11,

that the proposed garage was '*...not in keeping with the scale and massing of the existing structure... will have a detrimental effect on the overall appearance and amenity in the area and the wellbeing of the residents...*' This is because '*...the footprint of the proposed structure is over twice as large as the existing shed and larger than the dwelling house itself. The eaves of the front elevation are higher than those of the house. The style of the proposal is totally out of character with the existing house and the materials to be used for the proposal have no similarity to the house...*'

35. The complainant re-iterated his concerns that the Planning Committee's decision was based on flawed information and if provided with accurate information its decision '*...could very well have been different...*'
  
36. In relation to the conduct of the Planning Committee the complainant disagreed with the Council's comments he had the opportunity to rebut any points of disagreement including '*...the incorrect statements from the [Principal Planning Officer]...*' which they would have done if physically present. He re-iterated his wife was interrupted when presenting their objections, catching them '*...off guard...*' He believes this illustrated the limitations of online conferencing, conferring advantage to Principal Planning Officer. He also said he felt '*...intimidated...*' by a member of the Planning Committee questioning him on the measurements presented in objection and said this amounted the member calling him '*...a liar...*' He also '*...wondered why this councillor seemed more aggressive than all the other members of the committee, who remained silent...*' The complainant also raised concerns that after the applicant gave her uninterrupted four minute response, the member re-enforced measurements with her which he believed favoured the applicant and threw more doubt on the actual dimension of the structure and could '*...have had an effect on the outcome of the application...*'
  
37. The complainant referred to the Council's Committee Protocol and said the member who addressed him, overstepped the guidance relating to seeking clarification in his final remarks which he said were not a question but a criticism. He also said the Planning Officer should have intervened when the



member raised the issue of measurements for clarification and should have '*...remarked that the figures supplied to [the member] were inaccurate...*' The complainant said this was another example of the '*...bias and unfairness.*' of the process. The complainant emphasised that the Planning Committee or this Office did not know what the conclusion of their presentation to the planning committee was to be.

### *General Comments*

38. The complainant referred to the Principles of Good Administration and highlighted he did not believe the Planning Service had adhered to them. He said the consideration of the application was '*...totally unjustified and manipulated...*' and he held more senior officers responsible of the service provided. The complainant welcomed the maladministration identified and recommendations made. However, he strongly disagreed with those issues where I did not find maladministration as well as my finding that I considered there were no grounds on which I could question the discretionary decision to grant planning permission. The complainant also highlighted the personal health effects the consideration of this planning application has had on him and his wife.

### **Council's response to draft report**

39. The Council explained that a new planning portal went live in December 2022. This has meant that objections submitted online now automatically were acknowledged. Once submitted online '*...they automatically appear in the case officer's Task List, which is a digital checklist...*' In relation to objections still received via post or email, admin staff acknowledge and upload onto the portal upon receipt. All staff have been issued a user manual for the new planning portal which includes a section on dealing with representations made to the service. The Planning Service now operate a digital system with no paper files with task lists/digital checklists generated by the planning portal.

### **Analysis and Findings**

*Acknowledgment of objection letter and addendum, publication of addendum, and follow-up communication*

- i Acknowledgment of objection letter and addendum, and publication of addendum
40. The complainant said the Planning Service failed to acknowledge his objection letter, dated 9 December 2021 and the addendum he later submitted dated 15 December 2021.
41. I considered the records the Council and complainant provided, as well as the published objections on the planning portal in relation to the application.
42. I note the complainant requested the Planning Service acknowledge his submissions made on 9 and 15 December 2021, regarding the amended planning application. I note the Planning Service did not provide these acknowledgments. However, I note it did acknowledge the complainant's objections submitted, on 4 August 2021, in response to the original planning application. I refer to the neighbour notification letter the complainant received in July 2021 about the original planning application. It stated '*...While the Council is normally unable to enter into correspondence concerning detailed comments made, we will acknowledge receipt of any written representations...*' Even given this statement, I consider it reasonable for the complainant to expect the same acknowledgement for his later submissions. This is especially given that the complainant specifically requested such an acknowledgment in December 2021. I am disappointed the Council did not do so.
43. The complainant also said the Council did not publish his objections outlined in his addendum dated 15 December 2021. He was concerned that this meant the Planning Committee did not consider it when making its decision.
44. I acknowledge that the Case Officer, following receipt of the complainant's 16 December 2021 email, (containing both the original 9 December 2021 objection letter and addendum), forwarded the attachments and sent a request to have the objections uploaded to the planning portal. On review of the planning portal, I note the Planning Service only published the complainant's letter of 9 December 2021. It did not publish the addendum he submitted dated 15

December 2021. I further note the complainant's details of concerns raised in both objection letters of 9 and 15 December 2021. I consider the information contained within these letters is similar except for an additional reference to planning policy and human rights in his letter of 15 December 2021.

45. The Second Principle of Good Administration, '*Being customer focused*', requires bodies to keep to its commitments. The Third Principle of Good Administration '*Being open and Accountable*' requires public bodies to handle '*...information properly and appropriately.*' Given the available evidence, I consider the Council failed to meet these principles when it did not acknowledge the complainant's submissions dated 9 and 15 December 2021, and when it failed to publish the complainant's addendum on the Planning Portal. I am satisfied that this constitutes maladministration. As a result of this maladministration, I consider the complainant sustained the injustice of uncertainty and frustration. I therefore uphold this element of complaint.
  46. I recognise the concern this would have caused the complainant, especially as it led him to believe that the Planning Committee did not have the opportunity to review his submission dated 15 December 2021. However, I am satisfied, given the information within the complainant's letters of 9 and 15 December 2021, that the failure to publish the submission dated 15 December 2021 would not have resulted in Planning Committee members having any pertinent information withheld from them. I will address the Case Officer's consideration of the complainant's letter of 15 December 2021 within the planning process at paragraphs 58 to 63.
  47. I wish to acknowledge and welcome the Council's apology, already provided to the complainant, regarding its failure to publish the addendum.
- ii Follow-up communication
48. The complainant raised concern that his wife attempted to contact the Case Officer on at least two occasions during October to December 2021, and up to three occasions from early January 2022 to 2 February 2022. He said the

Case Officer did not respond to his wife until 2 February 2022 when she emailed the Case Officer.

49. I considered records both the Council and the complainant provided. The complainant's wife's email, dated 1 February 2022, referenced her attempts to contact the Case Officer.
50. In her reply, dated 2 February 2022, the Case Officer apologised and explained she was not aware of these attempts, and she would telephone her the following day. The records evidence that the Case Officer contacted the complainant's wife, on 4 February 2022, to notify her that she was unable to contact her as previously arranged. The Case Officer also informed the complainant's wife of reasons why she was unable to do so and provided information on the next steps within planning process. Furthermore, she told her when she would return to the office if the complainant's wife wished to contact her for further information.
51. I considered the Council's comments that it does not normally enter into correspondence with objectors, and that in this case it was '*...not aware of any requests for information which were ignored. There may have been delays in acknowledging correspondence, which will have been due to the fact that staff have had limited access to the office during the covid restrictions, and this has had an impact on service delivery.*' I also considered the complainant's comments about how communication systems were affected by Covid.
52. While I have no evidence of the calls, I have no reason to doubt the complainant's wife contacted the Council at the times specified. However, I cannot be satisfied that the Case Officer was aware of these attempts until she received the complainant's wife's email on 2 February 2022. I was pleased to note that the Case Officer acted on the correspondence when she received it. This is despite the Council's stance that it does not enter into correspondence with objectors. For these reasons, I have not identified any maladministration in relation to the actions of the Case Officer regarding her follow-up communication with the complainant's wife.

53. I recognise there was a lack of presence in the office due to the Covid pandemic at that time. However, I am concerned that the Council did not deal with telephone enquiries appropriately during that period. I would ask the Council to consider this and ensure it has systems in place to deal with such events in future.

*Application of planning policy*

i. Request for floor plans

54. The complainant said the Planning Service failed to apply planning policy when making its recommendation to the Planning Committee. He also said the Planning Service applied '*...personal opinion and prejudice...*', which conflicted with objectors' views. He also said the process lacked '*...transparency...*' as well as '*...impartially and fairness...*' I also acknowledged the complainant comments about the relevance of the size of the original structure. I considered the records the Council and complainant provided.
55. I refer to Annex B of Addendum to PPS 7 which states '*...For applications for full planning permission both existing and proposed elevations and floor plans are required...*' I refer to the Case Officer's record of her site visit on 19 October 2021 in which she confirms the plans of the existing development appear correct. I note that there is no information recorded as to how she reached this conclusion.
56. I acknowledge the Council's comments that in this case it would have been disproportionate to request floor plans as '*...the impact of the original garage was not under consideration...*' and that it took the measurements of the existing garage from the submitted location map. However, I consider it would have been prudent for the Planning Service to request floor plans. Or, if it did not consider it proportionate, for the Case Officer to measure and accurately record the size of the existing garage during her site visit. This is because of the number of objections the Council received about the size of the new garage in relation to the existing garage. Additionally, while I acknowledge the impact of the existing garage was not under consideration, I consider that floor plans

could have assisted the Case Officer in her determinations regarding the scale and massing of the proposal and whether these were '*...sympathetic with the built form...of the existing property...*' as set out in the criteria Policy EXT 1 and Section A11 of Annex A of Addendum to PPS 7. I further consider that if the Planning Service did not go back to the applicant to request floor plans of the existing garage, in line with Annex B of Addendum to PPS 7, it should have recorded the rationale for this.

57. I refer to the first Principle of Good Administration 'Getting it Right' which requires public bodies to act in accordance with the law and relevant guidance. I also refer to the third Principle of Good Administration: which requires public bodies to be '*open and accountable*' in providing honest, evidence-based explanations and giving reasons for its decisions and keeping full and accurate records. I consider that failure to obtain accurate floors plans of the existing garage, or the lack of the recording of a rationale for its decision not to do so, constitutes maladministration. I will consider the injustice sustained by the complainant at paragraph 65.

ii. Consideration of policy criteria and objections

58. I note Policy Ext 1 and section A11 of Annex A of the Addendum to PPS 7. I considered the Case Officer's records of her site visit, the amended plans the applicant's agent submitted, including the information and photographs on the proposed external finish. I further considered that at a Group<sup>5</sup> meeting on 4 January 2022, officers discussed the application. This involved discussions on the size of the proposed garage. However, I note the brief nature of the note taken regarding these discussions. I refer to section seven of the Case Officer's report to the Planning Committee that summarises consideration given to relevant policy.

59. I note the Council's comments that it considered the amended plans submitted on 12 November 2021 acceptable as set out at paragraph 18. I also acknowledge the Council's comments that the Case Officer's report is '*...a*

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<sup>5</sup> The purpose of the group planning meetings is for case officers to discuss their caseload of planning applications with colleagues and agree recommendations.

*general consideration of the issues raised presented in a proportionate manner...*’ and that the report refers to the relevant policy at section seven. I acknowledge and accept the Council’s comments that it is appropriate to present a summary of the consideration of relevant policy to the Planning Committee. However, it is my opinion the Council should retain a full record of the Case Officer’s deliberations within the planning file, including deliberations and discussions from Group meetings and those with other colleagues. This should include the recording of a rationale as to why the Planning Service considered criteria within planning policy fulfilled.

60. I refer to the 2011 Act which requires Councils to ‘...*take into account any representations...*’ relating to applications. I considered the issues the complainant raised in his letter of objections dated 9 and 15 December 2021, including the additional information about Human Rights in his letter dated 15 December 2015. I also refer to the Case Officer’s report and particularly sections six and eight. I acknowledge the Council’s comments that ‘...*a general consideration of the issues raised presented in a proportionate manner...*’ I accept the Case Officer’s report is a summary of the consideration given to objections, including that which the complainant raised in his addendum.
61. I am satisfied, that in this case, the report summarises the complainant’s concerns (as raised in his letter of 9 and 15 December 2021) and those of other objectors, as well as summarising the Case Officer’s consideration of the objections. While I acknowledge the concerns of the complainant regarding the use of the garage as well as any future enforcement of any conditions, I note the Case Officer addressed the concerns of the objectors about the potential commercial or agricultural use of the garage by means of a condition placed on the recommendation to approve the application. A condition was also placed to ensure the garage was built in accordance to the plans referenced in the planning approval. Although I do acknowledge this will not have given any reassurance to the complainant given his objections/concerns with the plans and the potential use of the garage. However, I consider the planning file should contain a full record of the Case Officer’s consideration of the objections received including their rationale for considering the validity of the objections.

62. I refer again to the third Principle of Good Administration which requires public bodies to state '*...its criteria for decision making and giving reasons for decisions...*' and to '*...keep proper and appropriate records...*' This principle underscores the need for public bodies to create and retain records of decisions. This is a key principle of good administration. To comply with this principle, adequate and contemporaneous records of matters the public body considered, decisions made, and the reasons for those decisions, including the weight given to relevant factors, must be retained. Without such records 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.
63. I consider the lack of record keeping regarding the decisions making process in respect of consideration of the Addendum to PPS 7 (specially Policy Ext 1 and Annex A, section A11), and objections received, as maladministration. I will address the injustice the complainant sustained at paragraph 65.
64. I note the complainant's concerns regarding the transparency, impartiality and fairness of the process. The records evidence that the Planning Service notified relevant neighbours of the application, and due to the numbers of objections received, referred the application to a Public Planning Committee. The Planning Service also afforded the complainant speaking rights at the Planning Committee in line with the Council's Committee Protocol. I acknowledge the complainant's comments that he believes that the above points do not indicate the process was transparent. While I raised concern with the retention of the Council's written rationale for its decisions, for the reasons outlined, I have not identified any concerns that it undertook the process leading to its decisions in a way that was not open, transparent, and fair. However, I acknowledge that the complainant's concerns regarding the transparency of the process, particularly in relation to the information that was provided to the Planning Committee, remain. I will address the information provided to the Planning Committee at paragraphs 72 to 81.



65. As a result of the maladministration identified at paragraphs 57 and 63, I consider the complainant sustained the injustice of uncertainty and frustration. This is because I am unable to provide reassurance to the complainant regarding the Council's decision making process. Furthermore, I consider that it also caused the complainant time and trouble by bringing his complaint to this office. Therefore, I partly uphold this element of complaint.
66. The 2016 Act permits me to only challenge a discretionary decision where I have identified maladministration in the process of making that decision. In this case, I identified maladministration in relation to the record keeping for the decision making process.
67. In his response to the draft report, the complainant suggested that as the assessment of the application was not based on facts or planning policy, the discretionary decision was flawed. I note his comment. However, I do not consider the record keeping failures identified are sufficient grounds for me to question the Council's discretionary decision. I am satisfied that even if the Council retained records outlining the reasons for its decision, it would not have generated a different outcome.

*Timing of determination of planning application*

68. The complainant received an email from his Member of Parliament (MP) on 14 December 2021. The email documented that the Planning Service recommended approval of the application. The complainant said this evidenced that the Council made its decision before the submission of at least seven letters of objection. As a result, he believed the Planning Service gave no consideration to these objections. I note the Council received objections to the applicant's amended plans between 7 and 29 December 2021.
69. The MP sent his email to the complainant following his meeting with the Principal Planning Officer on 14 December 2021. The note of this meeting documents, '*...application was still being considered and no final decision has been made to date...*' I recognise this does not correspond with the email the

complainant received from his MP which stated the planning service would be bringing the application ‘...forward as an approval...’

70. I also considered notes of telephone calls between the Case Officer and the applicant on 16 December 2021 and 26 January 2022. They document that the Case Officer informed the applicant that the Planning Service was still considering the application due to the objections received. I also note the emails between the Case Officer and the Head of Planning and Building Control from 21 December 2021. They document that the Case Officer uploaded objections to the planning portal and that she informed the applicant she would not be undertaking further work on the application until early January 2022. I further note the Principal Planning Officer discussed the application at a Group meeting on 4 January 2020.
71. I acknowledge and note the complainant’s concerns about the different account from the record of the meeting on 13 December 2021 and the subsequent MP’s email on 14 December 2021. I further recognise that, because of the MP’s email, the complainant believed the Planning Service took the decision to recommend approval of the application before 14 December 2021. However, given the other available evidence, and in particular the Case Officer’s communications and the Group meeting, I am satisfied the Planning Service did not make the decision to recommend approval of the application before this date, or before the complainant (or other objectors) submitted letters of objection. Therefore, I do not uphold this element of the complaint.

*Provision of information to planning committee and conduct of planning committee*

72. The complainant said the Planning Service provided inaccurate and incomplete information to the Planning Committee which failed to address objectors’ concerns. In particular, he queried the size of the existing structure presented, that the replacement structure was on a similar footprint to the existing structure, that the Planning Service presented the eastern boundary of the site as defined by agricultural land, and did not refer to planning policy. The complainant believed the Planning Committee denied him a ‘...fair and public hearing...’ He said the Chair did not allow him the maximum time allowed to

present his case and a member of the Planning Committee put into doubt his honesty regarding the measurements he presented.

73. I considered the records both the Council and complainant provided.
- i. Accuracy of information provided
74. I note the complainant's transcript and the Council's audio recording of the Planning Committee, as well as the Case Officer's report and the Principal Planning Officer's PowerPoint slides as presented to the Committee. An aerial photograph of the site and its surrounding area was provided as part of the PowerPoint. I also note the range of measurements of the existing garage obtained from the submitted location map. I note the existing garage is referenced as '*...measuring approximately 12m x 6m...*', the proposed garage '*...will be on a similar footprint...*', and the eastern boundary of the site is '*defined by agricultural land...*' I also note the Case Officer's report sets out the planning policies that apply to the application and summarises the consideration given to these policies. I acknowledge the complainant disputes this information.
75. I note the Council's comments that '*...There was no deliberate intention to mislead the Planning Committee...the Council was fully aware of [the complainant's] objections and [the complainant] had registered speaking rights and attended the Planning Committee... and therefore had the opportunity to rebut any points of disagreement...As such, [the complainant] was not prejudiced in the decision making process...The drawings and other technical information are published on the Planning Portal and therefore available for inspection by Elected Members and members of the public...*' I also note the Council's comments on what the complainant viewed as inaccuracies '*...Given that there is no development to the east of the site, the description...*' defined by agricultural land '*...is a fair and reasonable representation.*' The measurements of the existing garage '*...were taken from the submitted location map...*' and '*...the proposed garage does sit on the footprint of the existing Nissen shed to the rear of the host property.*'

76. In relation to the accuracy of the information provided to the Planning Committee, I considered the aerial photograph of the surrounding area showing agricultural land to the east of the site as well the access road neighbours used. I also considered the further description provided by the complainant. Given the available evidence, I am satisfied with the Planning Service's description of the site.
77. In relation to the size of the existing garage structure, I acknowledge the complainant obtained different measurements for the existing garage than those the Council provided to the Planning Committee. Having considered the location map provided, my office discovered it is possible to obtain a range of measurements depending on where the complainant or Officers took measurements on the dashed line on the map. I consider that within the presentation and report provided to the Planning Committee, Officers gave approximate (rather than exact) measurements of the existing garage. I acknowledge the Council's view that all drawings were available on the planning portal for Committee members to scrutinise. However, as I identified in paragraphs 54 to 57 of this report, given the number of objections about the size of the proposed garage when compared with the existing garage, I consider it was more appropriate for the Council to provide exact measurements of the existing garage to the Planning Committee. This is especially given the discrepancy of measurements obtained using the location map. The Council could only have achieved this by obtaining floor plans of the existing garage or by the Case Officer measuring and accurately recording measurement during her site visit. Without the exact measurements, I cannot be satisfied that the information the Council provided to the Planning Committee was accurate.
78. I refer to the statement provided that the proposed garage would be on a similar footprint to the existing garage. I note the Planning Service published the location map showing a comparison of the footprints of the existing and proposed structures on the planning portal for Committee Members to scrutinise prior to the Committee meeting. I further note the area of the proposed structure, compared to the existing structure, would again depend on

where the complainant or Case Officer took measurements from on the location map. As already detailed above, the Planning Service cited only approximate measurements. I again cannot be satisfied that the information the Council provided to the Planning Committee was accurate.

79. I refer to the third Principle of Good Administration '*Being Open and Accountable*' that requires public bodies to ensure information is '*...clear accurate and complete...*' I consider the accuracy of the information provided to the Planning Committee in relation to the size of the existing garage, and the comparison between the existing and proposed footprints, did not meet this principle. I consider this constitutes maladministration. I consider the complainant sustained the injustice of uncertainty and frustration. However, I am satisfied the Council would not have reached a different decision had these failures not occurred. This is because Planning Committee members had access to relevant/sufficient information to reach a decision which included, access to plans, objectors' representations on the planning portal, responses from statutory consultees and planning officer's considerations of the planning policy. Therefore, on balance, I consider the decision on the application would have been the same. However, I acknowledge the complainant strongly disagrees with this.
80. I refer to the complainant's concerns that the Planning Service did not refer the Planning Committee to the relevant policy. It is my view that the Principal Planning Officer's information presented to the Planning Committee should be considered in conjunction with the Case Officer's report to the Planning Committee. When done so, there is evidence that planning policy was referenced, and a summary of the consideration given to them, presented to the Planning Committee.
81. As a result of my findings at paragraph 79 I partially uphold this element of complaint.

ii. Conduct of Planning Committee

82. I note the Chair of the Planning Committee provided the complainant's wife three minutes and 27 seconds speaking time during the committee session. I accept that this is not in line with the Council's Committee Protocol that states '*...The total time allowed for objectors to address the Committee will not be more than 4 minutes...*' I refer to the first Principle of Good Administration 'Getting it Right' which requires public bodies to act in accordance with the law and relevant guidance. Therefore, I am satisfied the failure to allow the complainant's wife to speak for a full four minutes constitutes maladministration. I consider both the complainant and his wife likely experienced the injustice of frustration by their time being cut short. Therefore, I uphold this element of complainant.
83. However, I note when the Chair told the complainant's wife her speaking time was up, she was in the process of concluding and summarising why she felt there had been irregularities in the planning process. While I acknowledge the complainant's comments that I was not aware of the information to be included in this conclusion/summary I do not consider that had the Chair allowed the complainant's wife the full allotted time, the Committee would have reached different decision. This is because of the amount of time the complainant's wife had left to speak (33 seconds).
84. I acknowledge the complainant's concerns that a member of the Planning Committee put into doubt his honesty. I considered the audio recording in relation to this matter. I also note the Council's Committee protocol which states that Committee Members can have the '*...opportunity to question each person making a representation, following their presentation...*' but should limit their questions to seeking clarification on any matters raised within the presentation. I recognise the complainant's concern, particularly in relation to the member's final remark However, based on the evidence available, I consider the member was initialling seeking clarification in line with the Council's Committee Protocol and that his final remark was a statement in follow-up to the clarification. While I acknowledge the complainant disagrees with me, I considered this appropriate and did not identify any concern with the manner in which the member spoke.

Therefore, I do not uphold this element of complaint. However, I would highlight my considerations at paragraphs 57 and 63 and emphasise that had the Case Officer obtained and recorded exact measurements, this interaction around the disputed measurements may not have been necessary.

## **CONCLUSION**

85. I received a complaint about the actions of the Council's Planning Service. The complainant raised concerns about the Council's consideration of a planning application to which he objected.

86. The investigation found maladministration in relation to:

- Acknowledgment of the complainant's submissions dated 9 and 15 December 2021;
- Publishing the complainant's addendum, dated 15 December 2021 on the Planning Portal;
- Obtaining floor plans for the existing garage;
- Recording of rationale regarding the decision not to obtain floor plans;
- Recording the decision making process in respect of consideration of the Addendum to PPS 7 and objections received;
- Provision of information to the Planning Committee in relation to the size of the existing garage and the comparison of the existing of proposed footprints; and
- Allocation of speaking time to the complainant's wife at the Planning Committee.

87. I am satisfied the maladministration identified caused the complainant and his wife to sustain the injustice of uncertainty and frustration. As well causing the complainant time and trouble by bringing his complaint to this office. However, while I have identified maladministration, I have found no grounds on which I could question the discretionary decision to grant planning permission. This is because I consider the Planning Officers and Planning Committee members

had access to relevant/sufficient information make a recommendation and reach a decision respectively.

88. The investigation did not find maladministration in relation to the following matters:
- Follow-up communication between the Planning Service and the complainant's wife;
  - The timing of the Planning Service to recommend approval of the application;
  - Openness and transparency of the processing of the application;
  - Provision of information to the Planning Committee in relation to the description of the eastern boundary of the site and references to planning policy; and
  - How members of the planning committee addressed the complainant.

### **Recommendations**

89. I recommend the Council provides to the complainant a written apology in accordance with NIPSO's 'Guidance on issuing an apology' (July 2019), for the injustice caused as a result of the maladministration identified (within **one month** of the date of this report).
90. For service improvement and to prevent future recurrence, I recommend the Council:-
- Shares the findings of this report with relevant staff for future learning;
  - Reminds relevant staff to clearly and accurately record all key decisions and the rationale for making those decisions;
  - Reviews how it measures existing structures prior to presenting those measurements to a Planning Committee, particularly in cases where measurements are disputed by objectors;
  - Disseminates to relevant staff any learning identified following this review; and



- Ensure that those objectors with speaking rights at Planning Committees are given the full time allocated to them.
91. I recommend that the Council implements an action plan to incorporate the recommendations made and should provide me with an update within **three** months of the date of my 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 relevant staff have read and understood any related policies).
92. The Council accepted the findings of the report.

**MARGARET KELLY**  
Ombudsman

**27 February 2024**

## 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.