

Committee:	Executive	Agenda Item No.:	10
Date:	9 <sup>th</sup> December 2013	Status	Open
Category	2. Decision within the functions of Executive 3. Part of the Budget and Policy Framework		
Subject:	Local Government Ombudsman's decision in relation to the appropriation of the land at Sherwood Lodge		
Report by:	The Monitoring Officer		
Other Officers Involved	Support Officer, Customer Services		
Director	Chief Executive Officer Director of Corporate Resources		
Relevant Portfolio Holder	Councillors E Watts and Alan Tomlinson Leader of the Council and Deputy Leader of the Council		

#### **RELEVANT CORPORATE AIMS**

CUSTOMER FOCUSED SERVICES – Providing excellent customer focused services.

SOCIAL INCLUSION – Promoting fairness, equality and lifelong learning.

STRATEGIC ORGANISATIONAL DEVELOPMENT – Continually improving our organisation.

To ensure that the organisation is fair to all service users.

#### **TARGETS**

Local performance indicators for handling Ombudsman complaints.

#### **VALUE FOR MONEY**

To review procedures to prevent a similar situation from happening again.

#### **THE REPORT**

The Local Government Ombudsman (LGO) investigated a complaint from Mrs B.

In October 2012 Mrs B complained to the LGO about the way the Council decided to appropriate land at Sherwood Lodge to sell for development. She had previously obtained documentary evidence from Derbyshire County

Council's archives and advised the Council of this when she complained through the Council's complaints process in June 2012.

The Council was unaware that the site included land which was designated as public open space in 1941 as it did not hold records from its predecessor council. Mrs B said that members of the public, including herself, had used the land for recreational purposes for many years.

Instead of advertising its intentions for the disposal of the land designated as public open space as required under the Local Government Act 1972, the Council decided to appropriate the land for planning purposes in an Executive meeting, in June 2011, from which the public were excluded. The intention was to thwart a village green application from residents which could have delayed the sale and development of the land. As the meeting was held in private, members of the public were not aware of the Council's intention to appropriate the land and had no opportunity to object.

The LGO, when referring to maladministration and service failure has used the word 'fault' to refer to them.

The full report is appended, however amongst the reasons the Council gave the LGO were that, had it known the space was designated open space, it would have known there was no prospect of a successful village green application. The land had formed part of the Council's main office complex since 1994 and was used infrequently by the public. The use of the land had been significantly developed since 1941 and the Council had developed it in the 1970s and in 1993 without any objections from the public. All the changes had required planning permission and therefore consultation had taken place with the public. When the new council offices were opened in 1994, the main grassed section of the grounds to Sherwood Lodge was used as an overspill staff car park. There is nothing in the title deeds to suggest the land was public open space. Additionally, the application to make the space a village green was rejected by Derbyshire County Council in June 2013.

However, the LGO found fault with the Council as follows:

- The Council should have held records from its predecessor authority and known the land at its former headquarters was dedicated open space
- The Council should have checked the status of the land and/or carried out a search with other agencies
- Being aware that there was open space should have alerted it to check whether it was dedicated
- Whilst awareness that it was dedicated would not have prevented the Council from appropriating the land for planning purposes, it did require the advertising and consideration of any objections prior to appropriation

- Subsection(1) of the Local Government Act 1974, section 122, requires the Council to decide that the land is no longer required for the purpose for which it was held immediately before the appropriation. This requires a council to consider the public need within the locality for the existing use. The LGO says that if members of the public had been included in the meeting it would have become clear that the land was open space.
- The Council has pointed out it was entitled to exclude the public because the report contained legally privileged information but this was not the reason it gave in its Executive report
- The Council's Disposal and Acquisition of Land and Property Assets Strategy does not cover the disposal of land designated as public open space

The LGO recommended that the Council should:

- apologise in writing to Mrs B
- pay Mrs B £250 to acknowledge the outrage and the loss of opportunity she has experienced
- revise its Disposal and Acquisition of Land and Property Assets Strategy to include procedures on how to deal with land designated as public open space and report the outcome to me within six months of the date of their report

### **ISSUES/OPTIONS FOR CONSIDERATION**

The findings of the Local Government Ombudsman and the actions taken to deal with the particular issues raised/faults found as outlined in the Local Government Ombudsman's report and this report.

It should be noted that the Council, whilst accepting fault in some areas, disputed the interpretation of the Ombudsman in relation to some of the matters not leading to fault.

The Monitoring Officer is statutorily required to report to members any finding of maladministration or injustice.

If the Council disagrees with the Local Government Ombudsman's report, the consequences are that the Ombudsman can issue a further report. After this, if the Council still does not take satisfactory action it must publish a statement in a local newspaper explaining why it has refused to follow the Ombudsman's recommendations.

## **IMPLICATIONS**

Financial: Avoiding maladministration and future compensation claims.  
Payment of compensation in this particular case.

Legal: Section 5A Local Government and Housing Act 1989 – this section requires the Monitoring Officer to report to the Executive where there has been a finding of maladministration or injustice by the Ombudsman and to consult the Head of Paid Service and Chief Finance Officer over the report. The Monitoring Officer's report must be sent to all Councillors as soon as it is prepared. Once the Executive has considered the report and decided what to do, the Executive is required to present a report to all Councillors and the Monitoring Officer outlining their actions in response. It is intended that the matter is reported to Council in January 2014.

Human Resources: None

## **RECOMMENDATION(S)**

1. That the report be received.
2. To write a letter of apology to Mrs B.
3. To compensate Mrs B to the amount of £250 to acknowledge the outrage and the loss of opportunity she has experienced with regard to the appropriation.
4. To review procedures with regard to the disposal of land designated as public open space and include in the Disposal and Acquisition of Land and Property Assets Strategy.

## **REASON FOR DECISION TO BE GIVEN IN ACCORDANCE WITH THE CONSTITUTION**

To ensure that Open Space is dealt with as required by statute when it is part of a site which may be disposed of in the future.

ATTACHMENTS: Y

Appendix A: The Local Government Ombudsman's report.

FILE REFERENCE: N/A

SOURCE DOCUMENT: N/A