

LONDON BOROUGH OF TOWER HAMLETS
COUNCIL MEETING
WEDNESDAY 15th SEPTEMBER 2010
LOCAL GOVERNMENT OMBUDSMAN FINDINGS AGAINST
THE COUNCIL
REPORT OF THE ASSISTANT CHIEF EXECUTIVE
(LEGAL SERVICES)

1. **SUMMARY**

- 1.1 To consider the report and findings of the Local Government Ombudsman in respect of Investigation No.08 002 912 concerning the finding of maladministration causing injustice resulting from the grant of Planning Permission by the Council.

2. **RECOMMENDATIONS**

Council is recommended to:-

- 2.1 Note the report and finding of maladministration against the Authority by the Local Government Ombudsman in respect of the investigation attached to the report to the Strategic Development Committee of the 10th November 2009 annexed hereto.
- 2.2 Confirm that the Authority accepts the recommendations in full and instructs officers to make the relevant payments of compensation to the complainant and to instruct independent valuers to carry out the comparative valuation set out in the Ombudsman's report.

3. BACKGROUND

- 3.1 On 6 August 2009 the Ombudsman made a finding of maladministration against the Council in respect of a Planning Application that was granted to properties at 18-22 River Street to erect balconies. A report (attached at Appendix 1) was submitted to the Strategic Development Committee as the sub-committee of Council with delegated responsibility to consider planning matters in order that that committee could be satisfied that appropriate steps had been taken to revise the planning procedures as required by the Ombudsman.
- 3.2 In general the findings of fact of the Ombudsman cannot be challenged. Therefore it was not recommended to challenge the maladministration decision. However the recommendations of the Ombudsman can be accepted or rejected by the Authority. In the Council's response to the Ombudsman report (see letter of 15 June 2009 attached at Appendix 3) officers addressed the issue of injustice caused by loss of amenity through overlooking. The Planning Officer's opinion was that the balcony did not result in an unacceptable level of overlooking in "*planning terms*" as there is no direct overlooking. In order to overlook the property the observer would have to whilst on the adjoining balcony turn, look to the building at 180 degree angle in order to see into the adjoining living room. This type of overlooking is not uncharacteristic of balconies erected on riverside properties. The amenity value is afforded by the views of the river and the view is unaffected by the adjoining balcony. Therefore the conclusion was that there was no injustice in relation to overlooking.
- 3.3 Since the committee meeting the Monitoring Officer has been in correspondence with the Ombudsman office to clarify the issue of lost of amenity due to overlooking. As the Strategic Development Committee Report states in the legal comments at paragraph 7.10 of the Strategic Development Committee Report '*there is no legal right to privacy in the context of not having ones property overlooked*'. The officers have asked the Ombudsman to modify the last recommendation regarding the re-evaluation of the property which it is believed is not a reasonable solution in this case. The officers have suggested that window treatment which prevents observers from looking into the property in daylight would be more appropriate as it is considered that this will stop the overlooking in daylight and a valuer would not be able to value the difference in value with or without an adjoining balcony as there is no direct overlooking.
- 3.4 Nevertheless the Ombudsman has reconsidered the position but will not modify his recommendation on this point and has stated that unless the Authority accepts his recommendations in full he will publish a further report which would also have to be considered by the Authority. Therefore the Monitoring Officer is recommending acceptance of the full recommendations and the appointment of an independent valuer to make the assessment.

4. COMMITTEE OF THE CHIEF FINANCIAL OFFICER

4.1 The cost of the compensation will be met within the Directorate budget.

5. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

5.1 The legal comments are set out in the Strategic Development Committee report at Appendix 1 and the body to this report.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 By having regard to the Ombudsman report the Council is demonstrating that it seeks to treat all systems equally and to ensure that services are carried out effectively.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

7.1 There are no issues arising out of this report.

8. RISK MANAGEMENT IMPLICATIONS

8.1 The Ombudsman report highlights that unless the Council has in place high quality systems for managing processing of planning applications error can arise which give rise to adverse publicity and poor public perception of planning procedures. The system has improved and appropriate measures have been put into place to ensure that errors are avoided.

9. EFFICIENCY STATEMENT

9.1 There are no issues arising out of this report.

10. ANTI POVERY IMPLICATIONS

10.1 There are no issues arising out of this report.

**Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report**

| Brief description of “back ground papers” | Name and telephone number of holder and address where open to inspection. |
|---|---|
|---|---|

APPENDICES

- Appendix 1: Report to the Strategic Development Committee,
10 November 2009
- Appendix 2: Minutes of the Strategic Development Committee,
10 November 2009
- Appendix 3: Letter to the Ombudsman dated 15 June 2009