

# Investigation Report

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## Investigation of a complaint against Mid and East Antrim Borough Council

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**NIPSO Reference: 17511**

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## **The Role of the Ombudsman**

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities. She may also investigate and report on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Where the Ombudsman finds maladministration or questions the merits of a decision taken in consequence of the exercise of professional judgment she must also consider whether this has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. The Ombudsman may recommend a remedy where she finds injustice as a consequence of the failings identified in her report.

The Ombudsman has discretion to determine the procedure for investigating a complaint to her Office.

## **Reporting in the Public Interest**

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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## SUMMARY

I received a complaint about the way Mid & East Antrim Borough Council dealt with a planning application for a house extension. The applicant's neighbours complained that the Council did not properly consider the impact of the proposed extension to their privacy, that neighbours had not been informed of changes to the plans, and that the Council had failed to take appropriate action about what they saw as a breach of planning permission. They also complained that the Council had not dealt with their complaint properly.

My Investigating Officer obtained from the Council all relevant documentation, together with the Council's comments on the issues raised by the complainant. The Investigating Officer also met with the complainants, and visited and viewed the property.

My role in investigating complaints about planning matters relates to the administrative actions of the Council. I cannot challenge a discretionary decision based on professional judgment unless I find there has been maladministration in the decision making process.

I found that the Council processed the planning application appropriately. I also found that the Council dealt with the alleged breach of planning permission appropriately.

However, I also found failures in certain aspects of the Council's record keeping and complaint handling.

I therefore recommended that the complainants receive an apology from the Council and a financial remedy of £500 for the injustice identified in the report.

## THE COMPLAINT

1. The complaint relates to the way Mid & East Antrim Borough Council (the Council) processed a planning application for a dormer extension at the rear of the complainant's neighbour's property. The rear of the property backs on to the rear of the complainants.
2. The application was submitted on 23 February 2016, originally for a *'proposed first floor roofspace conversion involving increasing height of existing roof.'* The Council requested the design be amended due to concerns about the visual impact of the proposed design and concerns raised by neighbours.
3. Amended plans were submitted on 1 July 2016 for a dormer extension to the rear of the property; the proposal was for a *'proposed roof space conversion to form two bedrooms to include rear dormer'*. Neighbours were notified of the amended plans. Further amended plans were submitted on 28 July 2016 to provide clarity on the ridge height of the property. On 1 August 2016 additional amended plans were submitted to show a change in position of a velux window at the front of the property.
4. Planning permission was granted on 5 August 2016.
5. The complaint concerns the Council's processing of this application, the action taken by the Council when the complainants reported that the applicant had breached planning permission, and the way the Council handled the complaint.

### Issues of complaint

The issues of complaint which I accepted for investigation were:

**Issue 1:** Whether the planning application was processed in the appropriate manner?

**Issue 2:** Whether the Council took appropriate action regarding a breach of planning permission?

**Issue 3:** Whether the complaint to the Council was handled appropriately?

## INVESTIGATION METHODOLOGY

6. In order to investigate the complaint, the Investigating Officer obtained from the Council all relevant documentation together with the Council's comments on the issues raised. This documentation included information relating to the Council's handling of the complaint. The Investigating Officer also met with the complainants on 28 June 2017 when they provided additional information relating to the complaint. The Investigating Officer also visited and viewed the property that the planning application related to.

### Relevant Standards

7. 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.
8. The general standards are the Ombudsman's Principles:
- The Principles of Good Administration<sup>1</sup>
  - The Principles of Good Complaints Handling
  - The Public Services Ombudsmen's Principles for Remedy
9. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative and professional judgement functions of the Council and Council staff, whose actions are the

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<sup>1</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

subject of this complaint.

10. The specific standards relevant to the planning application are as follows:

- Department of the Environment Development Management Practice Note 16 – The Determination of Planning Applications April 2015
- Department of the Environment Addendum to Planning Policy Statement 7 – Residential Extensions and Alterations March 2008
- Creating Places – achieving quality in residential developments May 2000
- Mid & East Antrim Borough Council’s Planning Enforcement Strategy March 2015
- Mid & East Antrim Borough Council’s Statement of Community Involvement August 2016
- Mid & East Antrim Borough Council’s Customer Service Charter
- Mid & East Antrim Borough Council’s Complaints Policy March 2015

11. My role in planning complaints relates to an examination of the administrative actions of the Council. I am unable to challenge the merits of a discretionary decision, such as a planning decision based on professional judgment, unless it is attended by maladministration.

12. I have not included all of the information obtained in the course of the investigation in this report. However, I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings.

## THE INVESTIGATION

### **Issue 1: Whether the planning application was processed in the appropriate manner?**

13. The complainants raised the following issues in the processing of the planning application:

- i. That the Council failed to notify them and other neighbours of changes to the amended plans of 28 July and 1 August 2016.
- ii. That the Council did not give proper consideration to the impact of the dormer extension on their privacy.
- iii. That the white cladding finish to the dormer extension was not in keeping with the surrounding area and should therefore not have been approved. They stated that the white cladding finish was not in keeping with Planning Policy Statement 7 (PPS 7) which states that any changes made should be sympathetic to the host building.

#### **Neighbour notification of amended plans**

14. I have reviewed the Department of the Environment's Development Management Practice Note 16 – The Determination of Planning Applications April 2015 (Practice Note 16). I note that Paragraph 4.12 of Practice Note 16 states that:  
*'There is no legal definition for material considerations; however they are held to include all the fundamental factors involved in land-use planning. Essentially a material consideration is one which is relevant to making a planning decision as to whether to grant or refuse an application for planning permission. Material considerations will vary depending on the specific circumstances of each case.'*
15. I note that Paragraph 4.15 of Practice Note 16 states that *'Examples of material considerations include 'the local development plan, planning policy, planning history, need, public opinion, consultation responses, existing site uses and features, layout, design and amenity matters, precedent, alternative sites and planning gain.'*
16. I note that Paragraph 4.17 of Practice Note 16 states that:  
*'In considering relevant material considerations there are two essential matters:*



- (i) *All relevant material considerations must be fully considered and the appropriate weight given to each. It is not sufficient to rely on any one factor to the extent that all others are displaced; and*
- (ii) *Weight is a matter for the decision maker.'*

17. In response to enquiries regarding the notification of neighbours following the submission of amended plans of 28 July and 1 August 2016, the Council responded as follows:
18. The Council stated that *'the amended plans received on 28th July and 1st August 2016 were non-material.'* The Council informed me that *'the difference between the drawings submitted on 1st July 2016 and those submitted on the 28th July and 1st August 2016 were minor providing clarification that uPVC cladding would match existing.'* The Council also stated that *'Given that the dormer window is to the rear of the host property with no public views and that the previous rear dormer was finished in white PVC cladding and that all other windows are white PVC, such a minor change is not material.'*
19. The Council informed me that *'Neighbours are not routinely notified on receipt of amended plans, but only where there are material changes.'* In this case the Council stated that *'the amendment was minor and did not require further neighbour notification.'*
20. I have reviewed the amended plans of 28 July 2016. I note that they differ from the plans of 1 July 2016 in two ways. Firstly, the 28 July 2016 plans indicate that the extension would not increase the existing ridge height of the property. Secondly, the description of the walling for the dormer extension is changed from *'brickwork to match existing'* to *'brickwork/uPVC cladding to match existing.'*
21. I have reviewed the amended plans of 1 August 2016. I note that they differ from the plans of 28 July 2016 as there is a change in position of a velux window at the front of the property.
22. I note that the Case Officer informed the complainants by email on 28 July

2016 that there had been a *'slight discrepancy with the front elevation on the proposed plans which has been resolved.'*

23. I have reviewed an *'Amended Plans Form'* in the Planning file. I note that this form records the Planning Department's decision not to re-advertise or re-notify neighbours following the receipt of the plans of 28 July 2016.

24. I have considered the content of a file note dated 1 August 2016 from the Case Officer. It states the following:

*'[The] plans submitted 1/8/16 were result of [the complainant's letter 28/7 in reference to the position of the velux on front elevation. As this was not a material change/De minimus<sup>2</sup> it was not considered necessary to re-notify neighbours. Cladding was existing on previous dormer and noted on plans of 28/7/16 which [the complainant] commented on.'*

## **Analysis and Findings**

25. I note the concerns in relation to the decision by the Council not to notify neighbours following the receipt of amended plans on 28 July and 1 August 2016. I also have considered the Council's response in relation to this issue. In particular I note the Council's view that neighbourhood notification did not occur as the changes in the plans were *'non-material'*.

26. I have examined the Council's records relating to this case. In particular, I note the content of the *'Amended Plans Form'* and the file note of 1 August 2016. I am satisfied, following review of these records, that the Council considered the requirement for neighbour notification following receipt of the amended plans on 28 July and 1 August 2016.

27. I have considered the relevant policies and guidance on this matter. In particular I note that Practice Note 16 states that *'Material considerations will*

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<sup>2</sup> This term covers minor works which, in relative terms, may not have a material effect on the external appearance of the building or structure on which they are installed.

*vary depending on the specific circumstances of each case.*’ I note that in this case the Council did not consider the changes to the plans of 28 July and 1 August 2016 to be material.

28. I stated earlier in the report that I am unable to challenge the merits of a discretionary decision, such as a planning decision based on professional judgment, unless it is attended by maladministration. I consider that the decision not to notify neighbours of the amended plans was not attended by maladministration. **I therefore do not uphold this element of the complaint.**

### **Consideration of the complainant’s privacy**

29. I have reviewed the guidance contained within *Creating Places – achieving quality in residential developments (May 2000)*. This guidance was produced jointly by the Roads Service and the then Planning Service. The document *‘describes the contributions to quality and sustainability that developers in Northern Ireland will be expected to make through the design of new residential developments.’*
30. I note that Paragraph 7.14 of *Creating Places* states that *‘well-designed layouts should, wherever possible, seek to minimise overlooking between dwellings and provide adequate space for privacy. The amount of space considered appropriate will vary according to the location, context and characteristic of the site.’*
31. I note that Paragraph 7.16 of *Creating Places* states that *‘where the development abuts<sup>3</sup> the private garden areas of existing properties, a separation distance greater than 20m will generally be appropriate to minimise overlooking, with a minimum of around 10m between the rear of new houses and the common boundary.’*
32. I have considered the Department of the Environment’s Addendum to Planning Policy Statement 7 – Residential Extensions and Alterations March 2008 (The

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<sup>3</sup> Be next too or have a common boundary with.

Addendum). This Addendum sets out the Department's planning policy for achieving quality in relation to proposals for residential extensions and alterations. It also assists the Council<sup>4</sup> in the determination of proposals.

33. I have considered Policy EXT 1 in the Addendum which sets out the criteria to be met before planning permission will be granted for a proposal to extend or alter a residential property. I note that criteria (b) states that *'the proposal [should] not affect the privacy or amenity of neighbouring residents.'*
34. I note that Annex A28 of the Addendum states that *'Except in the most isolated rural location, few households can claim not to be overlooked to some degree...the use of obscure glass, velux windows and high-level windows in appropriate circumstances can often minimise [the potential of extensions or alterations to cause overlooking problems], for example the use of obscure glass for bathroom and landing windows. However, this is not considered an acceptable solution for windows serving main rooms such as bedrooms, living rooms, dining rooms or kitchens.'*
35. In response to enquiries in relation to the Council's consideration of the impact of the proposed development on the privacy of neighbours, the Council responded as follows:
- 'Inter-visibility between buildings within an urban area is unavoidable and as such, overlooking between properties cannot be avoided. A professional judgement therefore has to be made as to whether the level of overlooking is considered reasonable.'*
36. The Council confirmed that *'In this particular case, there is a separation distance of approximately 27 metres between the properties, and both dwellings have back gardens in excess of 10 metres depth. The separation distance between properties is therefore considered acceptable to minimize overlooking. Furthermore the windows relate to bedrooms and a landing. As bedrooms are normally only occupied during the night with the curtains closed,*

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<sup>4</sup> Planning powers were transferred from the Department of the Environment to Councils on 1 April 2015.

*if the separation distance is sufficient, overlooking from a bedroom window is not considered unreasonable. As halls and landings are non-habitual rooms, less weight is attached to overlooking from these windows and given the separation distance between properties, any overlooking from this window would not be considered unreasonable within an urban context.'*

37. The Council explained that *'Obscure glazing is normally only provided for bathroom windows to provide the occupants of the property with privacy. In this case, the separation distance between the properties was above the recommended distance and therefore obscure glazing was not considered necessary. Obscure glass is not considered appropriate for bedroom windows. As the landing is a non-habitable room and the separation distance between properties is adequate, a condition requiring obscure glazing was not necessary.'*
38. The Council stated that the *'loss of privacy also has to be considered within the context that a similar dormer could have been constructed without planning permission under permitted development<sup>5</sup> with the same or a greater level of windows. It would therefore have been unsustainable to withhold planning permission on loss of privacy grounds.'*
39. The Case Officer stated that the complainant's property *'are on elevated sites from the application site, their gardens would be on a similar level to the proposed dormer window and it could be argued that they could have the potential to overlook the new proposal. However there is a separation distance of 27m from dwelling to dwelling, the new 1<sup>st</sup> floor accommodation is 2 bedrooms which are not considered to be main habitable rooms. Annex A28 of PPS 7 – Residential Extensions and Alterations explains that obscure glass is not an acceptable solution for bedroom windows.'*
40. The Case Officer also stated that *'In an urban context a separation distance of more than 20m would be acceptable between dwellings facing back to back.'*

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<sup>5</sup> Permitted development can occur in some cases where it is possible to carry out an extension or make an alteration to the dwellinghouse without the need to obtain planning permission, provided specific requirements are met.

*Creating Places 7.16 explains that a distance greater than 20m will generally be appropriate to minimize overlooking.'*

41. I also note that in relation to criteria (b) of Policy EXT 1 (paragraph 34 refers) the Case Officer stated that *'There will be no adverse amenity impacts on neighbouring properties as a result of overlooking, loss of light or dominance as detailed above. In my opinion the proposal is compliant with Policy EXT 1 of PPS 7'.*

## **Analysis and Findings**

42. I note the concerns raised in relation to the Council's consideration of the impact of the dormer extension on the privacy of neighbours. I also have considered the Council's response in relation to this issue. In particular I note the Council's view that *'overlooking between properties [in an urban area] cannot be avoided. A professional judgement therefore has to be made as to whether the level of overlooking is considered reasonable.'*
43. I note the relevant excerpts from the Development Management Officer Report. I am satisfied, having reviewed this record that the Case Officer considered the impact of the development on the privacy of neighbours and recorded these considerations with reference to the relevant policies and procedures.
44. As I stated earlier in this report I am unable to challenge the merits of a discretionary decision, such as a planning decision based on professional judgment, unless it is attended by maladministration. I consider that the Council's views on the impact of the extension on the privacy of neighbours was based on the professional judgment of the Case Officer. I have not identified any maladministration by the Council in its consideration of this issue.
- I therefore do not uphold this element of the complaint.**

## White cladding finish to the dormer extension

45. I have considered Policy EXT 1 in the Addendum to PPS 7 which outlines the criteria to be met before planning permission will be granted for a proposal to extend or alter a residential property. I note that criteria (a) states that *'the scale, massing, design and external materials of the proposal are sympathetic with the built form and appearance of the existing property and will not detract from the appearance and character of the surrounding area'*.
46. I have reviewed the relevant excerpts from the Development Management Officer Report. I note that the Case Officer stated that *'The proposal is small scale and in keeping with the established character of the area.'* I also note that the Case Officer stated that *'All finishes match the existing dwelling.'*
47. I note that the Case Officer referred to Policy EXT 1 of the Addendum in her report. With specific reference to criteria (a) I note that the Case Officer stated that:  
*'The proposed extension is small scale and in keeping with [the] character and design of the host building. It will appear subordinate to the existing dwelling and is only partially visible from public views. The external materials are the same as those already found on the building. There will be no adverse effects on the character of the area.'*
48. The Investigating Officer asked the Council to provide evidence to demonstrate that the proposed white cladding finish was considered as part of the decision to approve the planning application. In response the Council referred to the file note of 1 August 2016 and to the excerpt from the Case Officer's report which stated that *'The external materials are the same as those already found in the building.'*
49. The Council also advised me that *'The existing windows on the host property are white PVC as are those of the vast majority of dwellings in the neighborhood. The PVC cladding on the dormer window is therefore in keeping with existing windows. [The street] is suburban in character where PVC*



*windows, fascia boards, guttering and downpipes are common. As such, PVC cladding is not considered to be out of keeping with the character of this suburban area.'* The Council also informed me that *'the previous rear dormer was finished in white PVC cladding.'*

## **Analysis and Findings**

50. I note the concerns raised in relation to the Council's approval for white cladding finish to the dormer extension. I also have considered the Council's response in relation to this issue.
51. I note the content of the relevant excerpts from the Development Management Officer Report. I also note the content of the Case Officer's file note of 1 August 2016. I am satisfied, following review of these records, that the Council adequately considered whether the proposed white cladding was in keeping with the host building and the surrounding area, and recorded these considerations with reference to the relevant policy.
52. As I stated earlier in this report, I am unable to challenge the merits of a discretionary decision, such as a planning decision based on professional judgment, unless it is attended by maladministration. In this case I am satisfied that the Council's views on the suitability of the white cladding were based on the Case Officer's professional judgment. I have not identified any maladministration in relation to the Council's consideration of the suitability of the white cladding on the dormer extension. **I therefore do not uphold this element of the complaint.**

## **The complainant's response to the draft report**

53. In their response to the draft report, the complainant
54. *s referred to the Council's view that 'loss of privacy also has to be considered within the context that a similar dormer could have been constructed without planning permission under permitted development with the same or a greater*



*level of windows.*’ They stated that this comment is inaccurate as the planning application would not have met the permitted development criteria.

55. The complainants disputed the accuracy of the Case Officer’s comments that the properties *‘are on elevated sites from the application site, their gardens would be on a similar level to the proposed dormer window and it could be argued that they could have the potential to overlook the new proposal.’* They stated that their property and their rear garden are much lower than the dormer extension and they are fully observed in their garden from the dormer extension.
56. In response to this assertion, the Investigating Officer conducted a site visit to the property to obtain clarity on this issue. The Investigating Officer confirmed that the complainant’s property, including part of their garden, is located on approximately the same level as the dormer extension; while the remainder of the garden is located below the level of the dormer extension. The Investigating Officer also confirmed that part of the complainant’s garden can be seen by looking out the dormer extension windows.
57. I have carefully considered the complainant’s comments and the information obtained by the Investigating Officer during the site visit. However, I remain of the view that I have not identified any maladministration by the Council in its consideration of the privacy issue.

## **Issue 2: Whether the Council took appropriate action regarding a breach of planning permission?**

58. The complainants stated that the windows in the built dormer extension were bigger in size than stipulated on the approved plans, and that the Council failed to take enforcement action regarding this alleged breach of the planning conditions.
59. I have considered the Council’s Planning Enforcement Strategy (March 2015); its stated purpose is to *‘set out the Council’s objectives for planning*

*enforcement, its guiding principles and priorities for enforcement action and performance targets.'*

60. I note that Paragraph 3.1 of the Enforcement Strategy states that *'Under the provisions of the Planning Act (Northern Ireland) 2011 the Council has a general discretion to take enforcement action when it regards it as expedient to do so, having regard to the provisions of the local development plan and any other material considerations.'*
61. I note that Paragraph 6.1 of the Enforcement Strategy states that *'all alleged breaches of planning control will be investigated.'* I have also considered Paragraph 6.4 of the Enforcement Strategy which states that *'As enforcement is a discretionary power, the Council will not pursue those minor breaches of planning control where there is no significant harm being caused, or where it is not considered expedient to do so.'*
62. I note that Paragraph 7.6 of the Enforcement Strategy states that *'officers will, in general, aim to confirm whether there is a breach of planning control and set out the Council's position in writing to the land owner/developer and the complainant within eight weeks of a complaint being received.'*
63. In response to enquiries regarding the size of the dormer windows, the Council informed me that *'There [was] no unauthorized development to enforce against. Although the window openings vary slightly from those shown on the stamped approval plans, they remain in general conformity with the approved plans and therefore no consideration was given to the possibility of enforcement action.'*
64. The Investigating Officer asked the Council to outline the action taken to verify whether the dormer windows had been built in accordance with the approved plans. In response the Council stated that it was first made aware of the complainant's concerns on 13 October 2016. The Council stated that on 11 November 2016 it informed them that *'the photographs submitted had been considered'* but they *'did not appear to show any deviation from the approved plans.'*

65. I have reviewed the correspondence between the Council and the complainants relating to this issue of complaint. I note that their concerns were received by the Council on 3 October 2016, and again on 13 October 2016. I also note that on 4 November 2016 they supplied the Council with photographs of the completed dormer extension.
66. I have considered the letter of 11 November 2016 sent by the Council to the complainants on behalf of the Head of Planning. I note the following paragraph from the letter:
- 'You have also included photographs of the work as it is progressing and these have been considered. I would point out that the annotations on the approved plans state that the materials to be used in the construction of the extension are brickwork and UPVC cladding and the photographs do not appear to show any deviation. No requirement was stipulated as to the colour of the cladding. Unless the applicant is in breach of a planning condition or has not constructed the proposal in accordance with the stamped approval plans, the Council is unable to take further action with respect to the construction of the extension.'*

## **Analysis and Findings**

67. I note the concerns raised in relation to the Council's lack of enforcement action. I also have considered the Council's response in relation to this issue. In particular I note the Council's comments that although the photographs of the dormer extension were considered *'no consideration was given to the possibility of enforcement action'* as the window sizes remained in *'general conformity with the approved plans.'* I also note the comments of the Council that it informed the complainants on 11 November 2016 *'that the photographs did not appear to show any deviation from the approved plans.'*
68. I have considered the content of the Council's Planning Enforcement Strategy. In particular I note it states that the Council has a *'general discretion to take enforcement action when it regards it as expedient to do so.'* I also note that the Strategy states that *'all alleged breaches of planning control will be investigated.'*

69. As I stated earlier in this report I am unable to challenge the merits of a discretionary decision, such as a planning decision based on professional judgment, unless it is attended by maladministration. The decision made by the Council not to proceed with enforcement action was a discretionary decision based on the professional judgment of planning staff. I have not identified any maladministration by the Council in relation to how it reached this decision. **I therefore do not uphold this element of the complaint.**
70. I have reviewed the letter of 11 November 2016 from the Council to the complainants. I find that there is no specific reference in this correspondence to the concerns raised regarding the size of the dormer windows or any consideration given by the Council on this matter. I also note that the Council's planning file contains no contemporaneous records of any discussions or considerations that took place in relation to whether a breach of planning control had occurred or any decisions made in this regard.
71. The Third Principle of Good Administration requires public bodies to be 'Open and accountable'. This principle underscores the need for records of all decisions to be created and maintained. This is a key element of good administrative practice. To comply with this principle adequate and contemporaneous written records must be completed of matters considered, decisions made and the reasons for the decisions including the weight given to relevant evidence. I find that in this case appropriate records were not made by the Council in relation to its consideration of the concerns raised.
72. I consider that the recording of these considerations and decisions is an important element of good planning practice. Records can act as a 'shield' for a public body to defend its actions when challenged. I am satisfied that the failure to record these considerations and decisions is contrary to the third Principle of Good Administration 'Being open and accountable'. That principle requires a public body to give reasons for its decisions and keep proper and appropriate records.
73. I consider that this failure in record keeping constitutes maladministration.

However, I have not identified any injustice suffered by the complainants as a result of this failure in record keeping.

74. I find that the Council failed to provide the complainants with information clearly advising them of any considerations or decisions taken by the Council in relation to their concerns regarding the size of the dormer windows. I find that this failure is contrary to the first principle of Good Administration 'Getting it right' which requires a public body to provide effective services. I also find that this failure is contrary to the third principle of Good Administration 'Being open and accountable' which requires a public body to provide clear and accurate information.
75. As a consequence of this maladministration I am satisfied that the complainants suffered the injustice of uncertainty and frustration given the lack of response by the Council in relation to this issue.

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

76. In its response to the draft report, the Council informed me that it disagreed with the draft finding that it failed to make appropriate records. The Council stated that the complainants did not report a breach of planning to Planning Enforcement. Further, the Council stated that the concerns raised by them *'were carefully considered in the Case Officer's report.'* The Council added that as this was not an enforcement matter *'there is no record of discussion or consideration as to whether a breach of planning occurred.'*
77. I have carefully considered the Council's comments regarding this issue. I have previously referred to correspondence in this report when the complainants informed the Council that the dormer windows had not been built in accordance with the approved plans. I remain of the view that the Council failed to appropriately record its consideration of the concerns raised.

### **The complainant's response to my draft report**

78. In their response to the draft report the complainants referred to a note on the

approved plans which stated the following: *'roof – concrete tiles to match existing.'* They stated that the roof on the dormer extension was made solely of felt and was therefore not built in accordance with the approved plans.

79. I sought clarity on this matter from the Council. The Council informed me that tiles were an unsuitable option for the dormer extension roof as it is flat. The Council also explained that the content of the note referred to the fact that tiles removed from the roof of the property to facilitate the extension should be replaced with similar tiles.
80. I have considered the information provided by the complainants and the Council on this subject. I remain of the view that I have not identified any maladministration by the Council with how it reached its decision not to proceed with enforcement action.

### **Issue 3: Whether the Council handled the complaint appropriately?**

81. The complainants stated that the Council's complaints correspondence contained numerous mistakes, omissions and discrepancies.
82. they provided the Investigating Officer with a large amount of supporting documentation in relation to this issue of complaint. This paperwork identifies numerous concerns with the Council's handling of their complaint. Given the volume of issues raised I do not believe it necessary or proportionate to refer to them all in this report. I therefore have only highlighted instances in my report where I have concerns with the actions of the Council. I also note that a number of the concerns raised refer to the processing of the planning application and are addressed earlier in this report.
83. The complainants referred to the following excerpt from the letter dated 11 November 2016 sent to them on behalf of the Head of Planning:

*'Further drawings were received on 1 August 2016 in response to your comments to the previous submission of 28 July 2016 to correct the position of*

*the front velux window. You therefore had an opportunity to comment on their substantive changes involved in this amended proposal.'*

84. They stated that the comments of the Council were untrue as they were not consulted about the amended plans of 28 July 2016.
85. I note that on 16 November 2016 the complainants informed the Council that these comments were inaccurate. I note that the Council response of 15 December 2016 made no reference to the comments. I note that in a letter dated 21 December 2016 they referred to '*untrue statements*' made by the Council and commented that they '*have not been addressed.*' I note that the Council response of 2 February 2017 did not refer to these comments.
86. I have reviewed the Council's Customer Service Charter. I note that the Charter states that its staff '*will be polite, friendly and helpful*' and '*will listen and treat you with dignity and respect at all times.*'

## **Analysis and Findings**

87. I have considered the complainant's concerns with the Council's handling of their complaint. I have also examined the complaint correspondence between them and the Council. I have considered the Council's comments in its letter of 11 November 2016. In particular I note that the letter refers to '*comments to the previous submission of 28 July 2016.*' I am satisfied that this comment infers that the complainants provided comments to the Council on the amended plans of 28 July 2016. However, I consider this comment to be inaccurate as they were never consulted about the 28 July 2016 plans.
88. I have considered the correspondence following the letter of 11 November 2016. I am satisfied that the letter of 16 November 2016 clearly advised the Council that its comments were inaccurate. I am also satisfied that the Council did not respond to the complainant's concerns.

89. I consider that in its letter of 11 November 2016 the Council failed to provide the complainants with clear and accurate information. I find that this failure is contrary to the third principle of Good Administration 'Being open and accountable' which requires a public body to provide clear and accurate information. I also consider that in subsequent correspondence the Council failed to acknowledge this mistake. I find that this failure is contrary to the fifth principle of Good Administration 'Putting things right' which requires a public body to acknowledge its mistakes and apologise where appropriate.
90. I consider that the Council's failings did not meet the standards required and constitutes maladministration. I am satisfied that this maladministration caused the complainants to suffer the injustice of frustration and time and trouble in pursuing their complaint.
91. I have not identified maladministration in relation to the other complaints handling concerns raised.

## CONCLUSION

92. I received a complaint about the actions of Mid & East Antrim Borough Council.
93. I have not found maladministration in respect of the Council's processing of the planning application.
94. My investigation identified maladministration in respect of the following matters:
- The failure in record keeping outlined in the report.
  - The failure to provide the complainants with clear information.
  - The failures in complaints handling identified in the report.
95. I am satisfied that the maladministration I identified caused the complainants to experience the injustice of frustration, uncertainty and time and trouble in bringing this complaint to my office.



## Recommendations for Remedy

96. Having considered the nature and extent of the injustice sustained in consequence of the maladministration identified in this report, I recommend the following remedies:

- The Council should apologise to the complainants for the failings identified in this report.
- The complainants should receive a payment of £500 by way of a solatium for the injustice identified in the report.

I recommend that the Council provide the apology and the solatium within one month of the date of my final report.

*Marie Anderson*

**MARIE ANDERSON**  
Ombudsman

**February 2019**

## APPENDIX ONE

# PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

### 1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

### 2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

### 3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

### 4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.

- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

**5. Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

**6. Seeking continuous improvement**

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

## APPENDIX TWO

# 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.