



Northern Ireland

**Public Services**  
Ombudsman

# **Investigation of a complaint against the Department for Infrastructure**

**Report Reference: 202001375**

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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: 202001375**

**Listed Authority:** Department for Infrastructure

## **SUMMARY**

I accepted a complaint against the Department for Infrastructure (the Department). The complaint related to the lack of development control for a large area of housing on the edge of Larne Town. In particular the lack of a clear plan to ensure the orderly construction of the Larne West Distributor Road. This road remains incomplete despite the majority of the original land being developed and the proposed housing being completed.

In 1997 planning permission was granted by the former Department of the Environment (DoE) for an area of approximately 88 hectares which was approved for mostly housing. The area plan in force at the time was the Larne West Development Strategy 1992. This included the indication that the development of the road infrastructure to serve the area of land zoned for housing on the west side of Larne would be developer led. Due to the nature of the way the parcels of land were developed a 150 metre stretch of the Larne West Distributor Road remains uncompleted. The uncompleted section is in the centre of the area developed and as such the houses at the north side of the area covered by planning application, F/96/0221, cannot access Larne Town via the Larne West Distributor Road. The area on the north side of the area developed is also not served by the Larne town bus service due to the connecting 150 metre section of the road not being completed

The key issue of complaint is that there was a failure to set planning conditions by the former DoE in the planning permission granted to ensure that, within the overall development, the spine of the distributor road was completed South to North as the development progressed.

The investigation has had the benefit of hindsight in terms of the impact of not including the necessary conditions within the relevant planning decision. However, I consider that such a scenario should have been considered and been addressed in the decision notice, therefore I found maladministration in the omission of planning

conditions to ensure the orderly development of the Larne West Distributor Road in the decision notice dated 15 February 1997. It was also established there was a failure to include reference to a layout drawing in the planning decision.

I consider the failure to attach conditions to the planning permission would have prevented or at least minimised the likelihood of the distributor road not being completed, prevented the development being progressed in an uncoordinated ad hoc way with sight of the 'big picture' plan being obscured. The use of conditions or controls could have brought order to this situation and prevented or at least minimised the likelihood of this happening, which is the central point of this complaint.

I acknowledged that the Department has previously met with local politicians, the local Council, which now has responsibility for planning matters, and other interested parties in an attempt to resolve this matter. Following my investigation, and recognising the legal constraints which exist, I recommend that the Department redouble its efforts and meet with these bodies and any other stakeholders again in an effort to bring about a resolution to the current situation. I recommended that the Department as part of this process should consider all options that are available and report to my office, within 6 months from the date of my final report.

## **THE COMPLAINT**

1. I accepted a complaint against the Department for Infrastructure (the Department). It concerns the construction and development of the Larne West Distributor Road in Larne, County Antrim from 1997, when planning permission was granted, and in particular the fact that a small portion of the spine of this road remains unfinished.

## **Background**

2. Initially I received a complaint from Mr Roy Beggs Jnr (while he was an MLA) on the basis that for several years he had received numerous complaints from constituents and residents living close to the Larne West Distributor Road in relation to transport difficulties. Mr Beggs Jnr ceased to be an MLA in March 2022 and I agreed that sponsorship of this complaint would transfer to Mr John Stewart, a current MLA representing East Antrim and that he would be the complainant.
3. The central issue relates to an unconstructed 150 metre stretch of the Larne West Distributor Road. Issues raised include the fact that residents experience longer journeys, traffic congestion and the negative impact on public transport services in the area. The complaint is that due to the Department's failures with respect to the initial planning permissions, the developer was not obliged to complete this stretch of road. Mr Beggs Jnr and the complainant have been in contact with Departmental Ministers and officials for several years but without a successful outcome. The Department maintains that the continued development of this stretch of road is no longer the responsibility of the Department and that any concerns should be raised with the developers and the owners of land in the area.
4. At this point I should explain that it is my normal practice not to investigate a complaint if the authorities complaints handling procedure has not been exhausted and the complaint relates to events which occurred over 12 months from the day on which the person aggrieved first had notice of the matters alleged in the complaint. However, in this case, due to the fact that the local MLA's have been in long running correspondence with the Department and its

Ministers, and the issues raised would not have been apparent until a significant proportion of the development progressed, I decided to use the discretion available under section 24(2) as I am satisfied that special circumstances exist which make it proper to do so. Section 24 (1) and (2) of the Public Services Ombudsman Act (Northern Ireland) 2016 states '*The Ombudsman may accept a complaint only if satisfied that the person aggrieved has invoked and exhausted the listed authorities complaints handling procedure...(2).But the Ombudsman may investigate a complaint despite the requirements of this section not being met, if there are special circumstance which make it proper to do so.*' I consider the fact of there having been long running correspondence with Ministers to constitute the special circumstances required.

5. I should also reference the fact that the approval of the planning permission (Application reference no F/96/0221 (the planning application)) which was the genesis of this complaint occurred on 15 February 1997, over 27 years ago. At that time the planning and Departmental landscape was in a very different political and administrative position than that which exists today. The initial planning permission was granted by the Planning Service which at that time was an executive agency within the Department of the Environment. The Planning Act (NI) 2011 established a two-tier system for the delivery of planning functions in Northern Ireland. Under the Act, responsibility for delivering the majority of planning functions passed from central government departments to local councils in April 2015. The Department of the Environment, which approved the application is no longer in existence. It is the Department of Infrastructure which currently has responsibility for preparing regional planning policy and legislation, monitoring and reporting on the performance of Councils, delivery of planning functions and making planning decisions in respect of a small number of regionally significant applications. Currently responsibility for the determination of the majority of planning applications in the Larne area is the responsibility of Mid and East Antrim Borough Council.

## **Issue of complaint**

6. I accepted the following issue of complaint for investigation:

**Was the initial Planning Permission, granted on 15 February 1997, attended by maladministration and if the Department, at this distance in time, has any responsibility towards the completion of the stretch of road in question.**

Within this issue of complaint my investigation will consider the following sub issues of complaint which somewhat overlap:

- a. The Department failed to take the necessary action to prevent a stretch of the distributor road being left unconstructed
- b. The Department failed to obtain a road bond with respect to the relevant development;
- c. The Department failed to attach the necessary conditions to planning permission to ensure the road was fully constructed.

## **INVESTIGATION METHODOLOGY**

7. To investigate this complaint, the Investigating Officer obtained from the Department all relevant documentation together with its comments on the issues the complainant raised. The documentation examined included the decision notice to approve the planning application and associated drawings, correspondence with Ministers and public representatives, the Larne West Development Strategy 1992 and the Larne Area plan 2010. The Investigating Officer attended the offices of the sponsoring MLA and spoke with the office manager and also met with senior officials from the Department.
8. The information and advice which informed the findings and conclusions are included within the body of this report.



## **Relevant Standards and Guidance**

9. 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>1</sup>:

- The Principles of Good Administration
10. 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 and professional judgement of those individuals whose actions are the subject of this complaint. It is also important to explain my role in planning matters. A complaint to me does not constitute an appeal about the merits of an individual planning decision. It is my role to determine whether there has been maladministration in the determination of a planning application. Where my investigation determines that there has been maladministration in the determination of a planning application, I will consider to what extent that has an impact on the merits of that decision. Where the maladministration has in my view a direct impact on the decision on the planning application, I may question the merits of that decision. Generally, I would only question a discretionary decision such as a determination of a planning application if it was significantly at variance with that which could be expected in the light of all the facts. It is not my role to consider whether the determination of a planning application was unlawful or to quash a planning decision, that is a matter for the courts.
  11. 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.
  12. A draft copy of this report was shared with the complainant and the Department for comment on its factual accuracy and the reasonableness of the findings and

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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.

recommendations. In response to the draft report the complainant indicated that he was broadly in agreement with the findings and conclusions. The Department provided a response which highlighted its view there was limited evidence available that the road was required to be completed in full and that this was subsequently overlooked. It thus contended that this would fall short of maladministration. I have considered the comments made by the Department and have made changes where I considered it was appropriate.

## **THE INVESTIGATION**

**Was the initial Planning Permission, granted on 15 February 1997, attended by maladministration and if the Department, at this distance in time, has any responsibility towards the completion of the stretch of road in question.**

### **Detail of Complaint**

13. The complaint concerns a section of the Larne West Distributor Road which remains unfinished. Planning permission for its construction was granted in February 1997 as part of the determination on a large development consisting mostly of houses. The complainant is of the view that Planning Service or the Department failed to set planning conditions which would have ensured that this developer led road would be completed. As a result, residents in the area experience longer journeys, traffic congestion and there is a negative impact on public transport services.

### **Evidence Considered**

14. **Larne West – A Development Strategy 1992**, Key Issues: Roads: *“it will be the responsibility of each developer within his area to provide the stretch of distributor road within his site and to conform to the overall roads layout as described in the strategy.....”*

**Larne Area Plan 2010** - Page 52 , Residential Zoning, paragraph H01 Larne West) – *“A site of 110.7 hectares has been zoned to the west of Larne. The development of housing land at Larne West will take place through a system of distributor roads. It is expected that developers will be*

*responsible for providing that part of the distributor road within their sites.”*

Mid and East Antrim Borough Council state within their website that the Larne Area Plan 2010 is the active plan for this area.

<https://www.midandeantrim.gov.uk/downloads/larne2010-areaplan.pdf>

The Private Street (Northern Ireland) Order 1980

<https://www.legislation.gov.uk/nisi/1980/1086/contents>

The Planning (Northern Ireland) Order 1991

<https://www.legislation.gov.uk/nisi/1991/1220/contents/made>

A Planning Strategy for Rural Northern Ireland, 1993 and its relevant policies including Policy PSU 4 Access Layout Servicing and Parking; Policy PSU 5 Main Traffic Routes; and PSU 8 New Infrastructure.

[https://www.infrastructureni.](https://www.infrastructureni.gov.uk/sites/default/files/publications/infrastructure/Planning%20Strategy%20for%20Rural%20Northern%20Ireland%20PSRNI.pdf)

[gov.uk/sites/default/files/publications/infrastructure/Planning%20Strategy%20for%20Rural%20Northern%20Ireland%20PSRNI.pdf](https://www.infrastructureni.gov.uk/sites/default/files/publications/infrastructure/Planning%20Strategy%20for%20Rural%20Northern%20Ireland%20PSRNI.pdf)

PPS 3 Development Control: Roads Considerations, May 1996.

UK Guidance Circular 11/95: use of conditions in planning permission

### **Departments response to Investigation enquiries**

15. Responding to the contention that the Department failed to take the necessary action to prevent a stretch of road being left unconstructed the Department stated that *‘the missing stretch of road is approximately 150m in length.*
16. The Department stated that the primary legislation for the planning approval of this development was the Planning Order, at that time *‘The Planning (Northern Ireland) Order 1991’*. *The planning approval included a condition (No. 2) and an informative (No. 1) relating to the Private Streets (Northern Ireland) Order 1980 for a ‘private streets determination’ for the construction of the roads within the development.*

17. For ease of reference, I have included the condition and informatives below:

*“CONDITION 02*

*ARTICLE 3 PRIVATE STREETS ORDER (NORTHERN IRELAND)*

*ORDER 1980*

*The Department hereby determines that the width, position and arrangements of the streets shall be as shown on the attached drawing Drg No's 01r1. The land to be regarded for the purpose of Part III of the Order as having been comprised in those streets is hereby determined as indicated in red and green on the attached drawings.”*

*“INFORMATIVE 01*

*PRIVATE STREETS ORDER (NI) 1980*

*Under the above Order the applicant is advised that before any work shall be done in or for the purpose of erecting a building the person having an estate in the land on which the building is to be erected is legally bound to enter into a bond and an agreement under seal for himself and his successors in title with the Department to make the roads and sewers in accordance with the Private Streets Construction Regulations.”*

18. The Department stated that *‘It is the role of the Department to ensure that this subordinate legislation for the Private Streets Order is applied in a proper manner. Departmental officials are content that this is the case. Once the private street determination is in place, it is then the responsibility of developers to sequence the bonding of sections of roads within their development as they deem appropriate, generally matching their construction programme. The Department has no statutory power to dictate to a developer how they sequence the construction and bonding of a development’.*
19. *‘In this planning approval, as is normal practice, the developer was required to take out a bond and construct the relevant section of road as houses were completed within each stage of the development. The developer progressed the construction of the housing development in phases. In the case of the ‘missing link’, the developer has not taken out a bond because there are no properties accessing onto it. One of the main purposes of the Private Streets Order is to offer protection to house owners*

*fronting the road. As there are no properties accessing onto the section of road in question, unfortunately there are no enforcement powers available to the Department within the Private Streets Order to force the developer to bond or complete this section of the link road'.*

20. Regarding the complaint that the Department failed to attach the necessary conditions to the initial planning permission to ensure that the road was constructed the Department stated that *'The roads authority (currently DfI Roads) is a statutory consultee to the planning authority and provides technical engineering advice during the decision-making process. The planning authority considers the advice provided by all consultees before making their decision. If a decision to approve is made by the planning authority, it will include conditions as it deems necessary. The planning authority approves the overall development layout for the housing including the road network within it. The roads conditions which were applied by the planning authority in relation to the private streets determination and the application of the Private Streets Order were appropriate'.*
21. The Department further stated that there is *'no condition defining or constraining the developer in terms of the timing of the delivery of the main distributor road. The planning authority is responsible for the planning conditions contained within an approval notice including enforcement for non-adherence or non-delivery. The Department is responsible for the application of sub-ordinate legislation i.e., the Private Streets Order.... the planning authority for the original approval in 1997 was the Planning Service, an agency within the then Department of the Environment (DoE). At that time, the roads authority, Roads Service was a separate agency within DoE. With the reform and transfer of planning functions in April 2015, jurisdiction for this planning application transferred to Mid and East Antrim Borough Council'.*
22. Regarding the failure to obtain a road bond with respect to the recent developments the Department stated that *'The legislation applied to secure a road bond is the Private Streets (Northern Ireland) Order 1980. One of the purposes of the Private Streets Order is to offer protection to house owners and assure them that the road*

*being constructed to access their property will be completed by the Department if the developer is unable to discharge their responsibilities. Within the Private Streets Order there is no power delegated to the Department to dictate to the developer the sequencing of the development or if a particular stretch of road should be bonded. The Private Streets Order requires that the road must connect to an existing bonded stretch and all houses have access. The Private Streets Order provides no power to require a developer to bond an area of their site which they are not yet developing. The developer of recent developments provided the Department with bonds for the parts of the development that they chose to construct. These streets are now adopted. ‘*

### **Interviews with relevant parties**

23. My Investigating Officer visited the offices of the complainant to discuss the complaint. It was explained that the complaint regarding the unfinished section of road was mainly in respect of traffic congestion and the belief that with the road complete that public transport options could be improved. It was accepted that the strip of land required to complete the section of road was in private ownership. It was also recognised that there were other developers in the area who would benefit from the road being completed but to date none of them had been successful in acquiring the land from the owner, though it was thought that at least one bid had been made.
24. It was hoped that vesting of the land by the Department might be an option given the contention that it was due to the decisions made when planning permission was first granted that had led to this situation developing in that conditions were not attached to the approval to ensure that the road was built or at least a bond obtained. The complainant wanted some learning to be gained by the Department from this complaint, some form of joined up thinking regarding infrastructure, to ensure that such a situation did not happen again in the future.
25. My Investigating officer also met with Officials from the Department who explained their understanding of the history of the site and its development. The land was owned by a limited company and was sold off to developers bit by bit. Currently the remaining strip is still owned by this company, and this is where the last piece of the

distributor road could be built. The company owner has met with the Department and has confirmed that it has no intention of selling the land unless it gets an offer to match its valuation.

26. The officials stated that going south to north the distributor road and houses were built by another company, the planning applicant, between 1997 - 2005. Construction was gradual and piecemeal with a bond being taken out in sections as the development progressed. Once a section of the road was built to a satisfactory standard it was then adopted into the road network. Development north to south was undertaken by a separate company on land also sold on the same basis as above and using the same planning permission. The officials were not certain as to why a section of uncompleted land/road was left, however they confirmed that planning permission was still valid for this strip of land. The north to south development took place later, mostly between 2015 -19. The separate company has built other houses in the area, for which planning permission was obtained on condition that improvements to local road infrastructure was made and traffic lights installed. Some houses in the area are still to be built post covid and there is continuing work on an upgrade to the sewage network. The builder has planning permission for other development of the immediate area and while some work has been undertaken it has not progressed as he does not own the required land to complete the distributor road. Any development completed by this builder has been undertaken in the knowledge that they do not own this significant strip of land.
27. The officials referenced that the Larne Area plans of 1992 and 2010 always foresaw the development of this area to be a developer led project with the Department coming in afterwards to adopt roads if they were constructed by developers to the requisite standard. It was never planned that the Department would itself construct roads or other infrastructure in the area.
28. There was discussion on the planning permission as granted in 1997. The officials accepted that things were done differently then. If the same development received approval today there would be a significant number of conditions and informatives. The same level of conditioning was not part of the process then, not just in this case but in all cases. It was explained that there have been major change in the

organisation of the Department together with legislative changes, the passage of time and movement of planning function to the Councils from that date.

29. It was further accepted that a road bond was not obtained to cover the whole area, but the officials stated that that this probably would not be done today either. Developers prefer to develop in bitesize sections as it saves them the expense of having to put up possibly prohibitive large amounts of money as a lump sum, Developers prefer to be receiving income from the sale of completed houses before proceeding on to build the next section.

30. Regarding drawing references in the planning approval, it was stated that the omission of reference to drawing O2r1 was only noted when preparing a response to this complaint. There are two maps associated with the approval, both are date stamped and approved by planners. Drawing O1r1 shows houses to the right of the distributor road and the footpath of the distributor road, drawing O2r1 shows houses to the left of the distributor road and the distributor road. The planning approval states at Condition No 2 'the width position and arrangements of the streets shall be as shown on the attached drawing O1R1....' there is no reference to O2R1. Development went ahead and only 25 years later was this noticed.
31. Regarding the Private Streets Order NI 1980, the officials stated that this legislation is in place to protect householders who front on to proposed roadways, to ensure that homeowners are not left 'high and dry' with no road built in front of their house. In this case no householders front on to an undeveloped road. Enforcement section had nothing to enforce because of this and also the fact that the time scale has long gone past the 4 year enforcement period.
32. Concerning the possibility of vesting, it was stated that the land is not owned by the Department and consideration has to be given to the use of public money in financially difficult times. In general terms, if a private developer is willing to build an uncompleted section of road and has already had a significant offer to purchase the necessary land turned down, it is difficult to justify vesting. Additionally, there would be the additional cost to the public purse of building the road. Moreover, developments had progressed in this area in the recent past without the distributor



road being completed with improvements and adjustments being made to other roads.

### **Initial Analysis and Findings**

33. In my consideration of this complaint, I examined the Larne West Development Strategy from January 1992. I note the strategy describes Larne West as the last remaining area of undeveloped land, comprising of some 88 hectares, lying to the west of Larne Town. It noted that this area was zoned primarily for residential use in the East Antrim Area Plan. Regarding proposed roads in the area it stated: *“it will be the responsibility of each developer within his area to provide the stretch of distributor road within his site and to conform to the overall roads layout as described in the strategy.....”*
34. The Larne Area Plan 2010, produced by the then Planning Service to inform the general public, statutory authorities, developers and other interested bodies of the policy framework and broad land use proposals used to guide development in the Larne Area, including Larne West up to the year 2010, used similar language. It also stated that it would be the responsibility of any developer to complete any stretch of the distributor road which fell within their area.
35. I am therefore satisfied that the plan for the development of this area of Larne has always had at its heart the concept that responsibility for the proposed spine road, from its northern end to its southern tip, would be with which ever developer was constructing the residential units within the zone. I have not seen any evidence which would suggest that it was ever proposed that any statutory or governmental body would take on responsibility for road construction. I am satisfied that the plan has always been for development of the distributor road to be ‘developer led’ and that when and if any associated road be constructed to the required standard, the Department would ‘adopt’ this road and thereafter be responsible for its maintenance.
36. I turn now to the planning permission granted by the Planning Service on 15 February 1997. The application was made on 22 July 1996 by Antrim Construction

Co Ltd for a Housing Development at Ballyoran 'Ballyoran Manor' between Ballyhampton Road/Ballymena Road, Larne. I did not examine the planning file for this application as, due to the passage of time, it no longer exists, however I was provided with the decision notice for the planning application as granted and associated maps showing the site layout.

37. The decision notice is brief, consisting of just 2.5 pages. There are five conditions attached, three of which concern planting and the prevention of debris. The others state that the development must commence within 5 years and reference Article 3 of the Private Streets (Northern Ireland) Order 1983. There are 9 informatives listed including reference to the Private streets Order (NI) 1990.

38. I note that Condition 02 states '*The Department hereby determines that the width, position and arrangements of the streets shall be as shown on the attached drawing Drg No's 01r1. The land to be regarded for the purpose of Part III of the Order as having been comprised in those streets is hereby determined as indicated in red and green on the attached drawings.*'

39. During this investigation, the Department informed me that in responding to my enquiries it became aware that while there were two associated private streets determination Layout Drawings (O1r1 and O2r1) in this application only one (O1r1) had been referenced at Condition No 2 in the decision notice. Drawing number O2r1 had not been referenced. I was informed that this issue has only now been discovered and has never been highlighted by any party as a reason for the missing link not having been constructed.

40. I examined both of these drawings. O1r1 indicates the planned houses to the right of the proposed distributor road and the footpath of the distributor road. O2r1 indicates the planned houses to the left of the proposed distributor road and the distributor road. Both drawings have been date stamped as having been received and approved by planners.

41. Having considered this matter I am of the opinion that the failure to include reference to the drawing O2r1 in the planning approval constitutes maladministration and to be

contrary to the first Principle of Good Administration, Getting it right - Taking proper account of established good practice. Nonetheless I do not consider the maladministration to have caused an injustice. I note that while the omission was not noted by the Planning Service at the time neither was it noted by the applicant who proceeded over the next number of years to successfully construct a portion of the distributor road and multiple housing units as depicted in the stamped and approved drawings. A portion of the area under development was subsequently sold to a separate developer along with the planning permission and a further portion of the distributor road was built along with the associated housing. The point being that development subsequently took place as initially envisioned in the planning approval (save for the connecting strip of the distributor road subject to this complaint). I do not consider that the technical omission of drawing O2r1 in the planning decision to be so consequential as to call into question the validity of the planning approval granted on 15 February 1997 as I am satisfied that both the Planning Service and the applicant were aware of the existence and relevance of both drawings, and they were taken into consideration during the approval process. This is evidenced by the drawings being stamped and approved by the Planning Service and the wording of condition 2 referring to drawings rather than the singular word drawing.

42. An issue of complaint is that the planning authorities at the time should have included a conditions or conditions in that a bond or cash sum should have been required to ensure that the distributor road was completed in its entirety.

43. My understanding of the process to be followed in relation to bonding is as follows.

- A housing development is granted planning approval by the planning authority with a condition relating to a Private Streets Determination, which indicates the line and layout of the development roads. A separate planning condition also requires a developer to construct these roads in accordance with the Private Streets Order.
- The Private Streets Order requires a developer to provide such monies, as is required for the street works prior to their commencement, either as a

cash sum or a bond. It is normal practice for larger developments, a developer bonds the roads within their development, in sections, to match the construction sequencing. The Private Streets Order does not require a developer to bond an area of their site which they are not yet developing.

- One of the main purposes of the Private Streets Order is to offer protection to house owners to ensure that subsequent to a house or number of houses being built, that they are connected to the road and has water, sewage and drainage etc.

44. In this case, the Department accepted that a road bond was not included as a condition to cover the entirety of the whole area to be developed, but that this condition would probably not be included should the same development be approved today. The Department explained that developers prefer to develop in bitesize sections as it saves them expense of having to put up possibly prohibitive large amounts of money as a lump sum before the development has realised an income stream. I accept this explanation and am satisfied that the inclusion of a conditional bond to cover the whole development area before building commenced could have been commercially prohibitive to a development which was intended to be 'developer led'. I also note that in this case, bonds were obtained from each developer in sections as construction advanced in accordance with the Private Streets Order as referenced in the decision notice. It is the case that, in relation to the uncompleted section of the distributor road, the developer has not taken out a bond as, for whatever reason, it has been decided that development will not proceed in this area and thus no houses have been built which front on to where the uncompleted section of the distributor road would be. Even should the situation exist where a bond had been requested and provided, as no houses front on to this portion of land there is nothing, and has been nothing for the Department, within the Private Streets Order to enforce.

45. Having said that, I do however accept the general premise made by the complainant that more prescriptive conditions could have been included in the planning approval which would have made the completion of the distributor road more likely. The concept envisioned within the Larne West Development Strategy in 1992 was that

this was to be a major development in the Larne area with over 88 hectares being developed. The completion of a 3km stretch of distributor road was planned to be a key part of the development linking the many hundreds of new housing units to the wider road network. While I accept that the level of detail contained within planning documentation today, in relation to conditions, is much more extensive than the situation which existed in 1997, the importance of a complete distributor road linking all the areas to be built appears to me to be so key to the overall concept that more consideration should have been given to ensuring its completion. The result of a lack conditions is the current situation, where over 27 years from the decision notice granting approval, the road infrastructure so clearly envisaged in the planning application has not been developed.

46. I accept the fact that the area plan indicates that the infrastructure required was to be developer led, nonetheless that does not mean that conditions could not have been inserted within the decision notice to ensure that the development proceeded in an orderly fashion and in accordance with that initially designed. In my view the development control process, which is about controlling and bringing order to development, is lacking in this case. The resulting development and infrastructure as it appears on the ground is not what was envisaged by the planners or the development strategy. In responding to this point the Department has accepted that a condition relating to the timing of the delivery of the spine road could have been applied, or an alternative method of approval and delivery could have been adopted. It stated that these would not necessarily have avoided the situation as we find it today and would have undoubtedly brought alternative challenges given the nature of competing landowners and developers. While acknowledging this I note that at the time it was granted, this was a single planning application. How the land was subsequently developed is a separate matter.

47. Having considered this matter carefully, overall I consider the failure to apply conditions to the decision notice of 15 February 1997, such as a condition relating to a time for the distributor road to be completed within or sequencing of the development along the stretch of the road from south to north, has contributed to the situation which developed, in that the spine distributor road was not completed in its entirety. I consider this to represent a failing in the planning process and to constitute

maladministration and to be contrary to the first Principle of Good Administration, Getting it right - Taking reasonable decisions, based on all relevant considerations. I consider that the complainant has suffered the injustice of frustration and annoyance within the planning process. I consider a remedy for the injustice suffered at the recommendations section at the conclusion of this report.

48. Another issue raised by the complainant is that of possible vesting of the requisite land by the Department to enable the uncompleted section of the distributor road to be completed. In response to investigation enquiries the Department stated that this option has not been considered. It stated that the strategy from the Larne West Study and the Larne Area Plan is, and remains, that the Larne West Distributor Road is a developer led concept with the responsibility of each developer to construct the section of distributor road within their ownership and control. The Department points out that the construction and delivery of this missing section remains subject to a Private Streets Determination.
49. I acknowledge the view of the Department in relation to vesting and that the underpinning concept of development of this area is that construction of the distributor road is to be developer led. However given the lack of conditions attached to the planning approval, development was allowed to progress in a way which has impacted a significant number of home owners. The situation as it stands today is that planning approval for the construction of the missing link is still current but that the land necessary to complete its construction is in private ownership. I understand that a developer is willing to undertake completion of this section of road, which would benefit separate construction work by this developer which is under consideration, but is unable to do so without ownership of the land. Negotiations for the sale of the land have taken place and an offer made, but agreement on a sale price has not been reached. Should agreement eventually be reached between the private developers concerned and the uncompleted section be completed, the Department has confirmed that it would adopt the completed portion of road and be responsible for its maintenance, should it be constructed to the necessary standard. If it is not possible for the necessary agreement to be reached by the developers to complete the remaining portion of the road, while I am not recommending vesting of

the land, and I do not underestimate the significant obstacles to this course of action, I do not consider that it should be totally discounted as an option.

### **Departments response to the Draft report**

50. In response to the draft report, the Department provided comment on its content 'from a *planning perspective*'. It stated that *while the 'Larne West Distributor Road' may not have been completed many of the houses under this and subsequent planning approvals have been constructed. Access is provided to the residential properties and roads have been subject to successive improvements.* Furthermore 'planning permission is just that, permission, and it is an established principle that a developer cannot be compelled to complete development.'
51. The Department referred to 6 legal tests in relation to conditions where a development is required to be constructed or carried out in a specific manner. It stated that any condition which required a developer to carry out development in its entirety or in complete accordance with a set of drawings is unlikely to meet these tests. The Department referred to a potential solution through the use of what are termed negative conditions giving examples of conditions using terminology such as 'Development shall not begin until .... ' or 'the building shall not be occupied until...'
53. As such, the Department contended, 'if the intention was to ensure that the road was completed in its entirety, then conditions such as above could have been attached to it. However, the effect of such conditions would have been either, to have prevented any house being built until such times as the road was completed, or to prevent a selection of houses from being occupied until such times as the road was completed. Given the current situation where the land in question is unlikely to be developed for a road at this time then the present scenario would be no different to that under the above conditions, except that in one scenario, all or some of the present homeowners could have been deprived of the opportunity to own those houses.
53. In relation to the question as to whether it was intentional to omit any such condition as stated above, the Department stated that the evidential context existing at the time of the application and decision would need to be known. It stated that 'It would

*be necessary to know if the road scheme was considered so crucial to the delivery of the housing, that the housing simply couldn't be allowed to proceed without absolute certainty that the road would be developed and completed. However, if that was not the context and the road was simply a part of the development that would or could yield benefits in connectivity and accessibility then it is arguably rational to not have included the condition and instead allowed the road to be developed along with the associated housing. This allowed a large development of housing to be provided, along with necessary road access infrastructure and the ultimate possibility that the full scheme would be realised'.*

54. The Department suggested that there are therefore three scenarios, *'the omission of any condition relating to the road completion, the restricting of any building until the road was completed, or the withholding of some housing until the road was completed. All of these options are predicated on knowing what the strategic need for the road was and what discussion took place around that. Neither the Larne West Development Strategy from January 1992 or the Larne Area Plan 2010 appear to contain a requirement for the entire spine road to be an integral and obligatory part of any housing development and indeed appear, as the draft report acknowledges to endorse the road as a 'developer led' project.*

55. In light of this the Department contended that the *'absence of documentary evidence that the road required to be completed in full, and that this was subsequently overlooked, means that the benefit of doubt rests with the then planning officials'.* Having said that the Department accepted that this matter can certainly be used to make an important point regarding the need to consider such situations, to ask the appropriate questions, consider the relevant conditions and document the necessary conclusions, but it did suggest that in this case it falls short of maladministration.

### **My response and conclusions to comments received relating to the draft report**

56. I have given careful consideration to the response provided by the Department following its consideration of the draft report. I accept the difficulties in revisiting this matter, in terms of the current planning governance landscape and legislative changes which have occurred over the last 27 years. I also acknowledge the



difficulties posed in the absence of a full planning file which may have shown what consideration was given by planning officials at the time in terms of 'conditionality'. As such I am unable to make a judgement as to the thought behind negative conditions not being applied.

57. Nonetheless I remain satisfied that, as the Department itself acknowledges, negative conditions could have been inserted within the decision notice to ensure that the development proceeded as it was initially conceived, that is with the spine distributor road being completed in its entirety. UK Guidance Circular 11/95: use of conditions in planning permission, accepts that the imposition of conditions requiring a development to be completed in its entirety often fail the legal test of need, however it does also state that conditions can be tailored to tackle specific problems. I consider the completion of the distributor road in this case could be seen to constitute a 'specific problem'. When the planning permission was granted in 1997, it was granted to an individual company and owner. Subsequently, in the absence of any conditions being attached to the planning permission, portions of the land were sold to other developers, which led to the development continuing in an uncoordinated ad hoc way. The use of conditions could have prevented or at least minimised the likelihood of this happening, which is the central point of this complaint.

58. As it stands today, I am of the view that the resulting development and infrastructure is not what was envisaged by the planners or the development strategy. This was to be a major development and investment in infrastructure in the Larne area, the size and scale of which would lead to a large increase in the footprint of the area covered by Larne town. While I accept that this major development was always intended to be 'developer led', there is no evidence within the development strategy or development plan that anything other than the completion of a complete distributor road was envisioned. The logic of including such a road to bring cohesion to the development and to ensure full and proper access to the whole area being developed is evident. I do accept the Department's point that a requirement that the distributor road be completed in full before any dwellings were allowed to proceed would have been an unreasonable condition, however I continue to maintain that the failure to apply conditions to the decision notice of 15 February 1997, such as a

condition relating to time for the distributor road to be completed or sequencing of the development along the stretch of the road from south to north, has contributed to the unsatisfactory situation which has developed. I remain satisfied that this constitutes maladministration as referenced in paragraph 47 of this report.

## **Conclusions**

57. As referenced in the opening paragraphs of this report, I have investigated a somewhat unusual situation in that I have examined a planning approval dating back to 1997 due to more recent concerns arising from a section of distributor road in Larne remaining uncompleted. I found there to have been an incidence of maladministration in the omission of reference to a layout drawing in the planning approval, but I do not consider that an injustice arose as a consequence. I have also made a finding of maladministration in the failure to include conditions relating to the completion of the distributor road in the decision notice of 15 February 1997. The decision as to whether the actions of the then Department of the Environment in not attaching conditions amounted to maladministration was a finely balanced one, made more difficult by the passage of time. I appreciate the time taken by current Department of Infrastructure staff in assisting my consideration.
58. The failure to complete the distributor road appears to me to have come about through the way development was allowed to proceed without the necessary controls or conditions being put in place regarding the construction of the distributor road. Currently a 150m 'link' section of the road remains undeveloped and in private ownership.
59. I can understand the complainant's disagreement with this situation and his efforts to improve traffic management and what he considers to be problems with congestion for his constituents. However, I note that while the failure to complete the spine of the distributor road was not what was initially envisaged, it has not prevented the continued development of the area with a number of subsequent development applications receiving planning consent. These have been approved, following traffic assessments, requiring some localised infrastructure improvements, in the presence of the incomplete distributor road. However, the benefit to the area from the

completion of the distributor road has not been realised as envisaged in the area plan.

60. I understand that the Department has met previously with interested parties in an attempt to resolve this matter, following my investigation I recommend that the Department

- I. While recognising the legal and enforcement constraints which exist, redouble its efforts and meet with Mid and East Antrim Council and other stakeholders in an effort to bring about a resolution to the current situation. The Department as part of this process should consider all options that are available and report to my office, within 6 months from the date of my final report.

**Margaret Kelly**  
**OMBUDSMAN**

**February 2025**

## **Appendix 1**

### **PRINCIPLES OF GOOD ADMINISTRATION**

**Good administration by public service providers means:**

#### **1. Getting it right**

- Acting in accordance with the law and relevant guidance, 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.

