



Northern Ireland

Public Services
Ombudsman

Investigation of a complaint against Fermanagh and Omagh District Council

Report Reference: 202006335

The Northern Ireland Public Services Ombudsman
33 Wellington Place
BELFAST
BT1 6HN
Tel: 028 9023 3821
Email: nipso@nipso.org.uk
Web: www.nipso.org.uk

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.

TABLE OF CONTENTS

	Page
SUMMARY	5
THE COMPLAINT	6
INVESTIGATION METHODOLOGY	8
THE INVESTIGATION	9
CONCLUSION	17
APPENDICES	18
Appendix 1 – The Principles of Good Administration	

Case Reference:202006335

Listed Authority: Fermanagh and Omagh District Council

SUMMARY

I received a complaint about the actions of the Fermanagh and Omagh District Council (the Council) Planning Committee in relation to the determination of an application for planning permission (the proposal).

The complainant believed that no valid planning reasons were given to justify the referral of the proposal to the Council's Planning Committee.

The complainant was also concerned about the reason the Council accepted in support of deferring the proposal from the scheduled Planning Committee meeting.

The complainant believed the Planning Committee did not properly consider the proposal.

My investigation found that the Council acted in accordance with the guidelines.

I concluded that there were no failures in the manner in which the Planning Committee made its decision.

THE COMPLAINT

1. This complaint was about how Fermanagh and Omagh District Council (the Council) processed the planning application in 2023. The complainant was an objector to the application.

Background

2. On 4 January 2023 the Council received an application for outline planning permission for the 'erection of a dwelling and a detached garage' (the proposal) on land in Rosslea.
3. The complainant objected to the proposal on grounds that the applicant failed to meet planning policy, particularly in relation to his farming activities.
4. The Council's Planning Officers considered that the proposal failed to meet planning policy and recommended refusing planning permission. The Planning Officers outlined four reasons for their recommendation for refusal. In summary they were:
 - The proposal is contrary Policy HOU 13, Paragraph 1 - Rounding Off as :-
*'the proposed dwelling will not result in the rounding off of a gap within an existing group of buildings which are sited outside a farm;
the buildings in the area do not appear as a focal point at a junction of roads or on the landscape
the site is not visually linked with an existing group of buildings constituting a minimum number of four buildings,
the proposed site is not bounded on at least two sides with other development in the cluster contrary to criteria
the proposed development cannot be absorbed into the existing cluster through rounding off and consolidation
the proposed development will significantly alter the existing character of the area by reason of a build-up of development.'*
 - The proposal is contrary to Policy HOU 13 paragraph 2 Infilling '*as the proposed site is not a small gap within an otherwise substantial and continuously built-up frontage of at least three buildings each with their own defined curtilage.'*

- The applicant had not demonstrated that *'the farm business is currently active and has been established for at least six years or there has been a break in the farm business.'*
 - The proposal would have a *'detrimental impact on the character of the rural area'*.
5. The proposal was 'called in'¹ to the Council's Planning Committee under its Scheme of Delegation². The Committee was to hear the proposal at its meeting on 20 September 2023.
 6. An MLA³ wished to speak on behalf of the applicant at this meeting. He requested speaking rights⁴ for the September meeting. However, he requested them after the deadline for doing so and was denied speaking rights for that meeting.
 7. At the meeting, members were informed by the Planning Officer that the applicant's daughter contacted the Planning Department by email on 19 September 2023. The email stated, *'Unfortunately, due to unforeseen circumstances the applicant is unable to attend tomorrow's planning committee meeting. In light of these developments, we should be obliged if this matter could be adjourned to the October meeting to allow the applicant to be in attendance'*.
 8. The matter was discussed by members 'in committee'⁵ and it was agreed the application would be deferred to be heard at a later date
 9. The Planning Committee considered the proposal at its meeting on 14 December 2023. It granted planning permission by a majority vote of seven for, zero against, and two abstentions.

Issue of complaint

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

Whether the way the Council determined the application for planning

¹ Called in – a request made by a member of the planning committee to have an application heard by it.

² Scheme of Delegation – a council scheme of delegated power where planning officers can make planning decisions

³ MLA – Member of the Local Assembly

⁴ Speaking Rights – where a politician, applicant, third party with an interest in an application can ask to speak for or against a proposal at a planning committee meeting.

⁵ In Committee – where the chair of the Planning Committee can decide to discuss a matter in private if it relates to an individual

permission was reasonable, appropriate and in line with relevant legislation and guidance.

INVESTIGATION METHODOLOGY

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

Relevant Standards and Guidance

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

The general standards are the Ombudsman's Principles⁶:

- The Principles of Good Administration

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

The specific standards and guidance relevant to this complaint are:

- The Planning (Northern Ireland) Act 2011 (the Act).
- Department for Infrastructure Strategic Planning Policy Statement for Northern Ireland, September 2015 (SPPS).
- Department for Infrastructure Development Plan Practice Note 1 'Introduction: Context for Local Development Plans', April 2015 (the DPPN)
- Department for Infrastructure Development Management Practice Note 15 'Council's Schemes of Delegation', April 2015 (the PN).
- Department for Infrastructure Best Practice Protocol for the Operation of Planning Committees, January 2015 (Best Practice).
- The Fermanagh and Omagh District Council Local Development Plan, 2023 (the LDP).

⁶ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- The Fermanagh and Omagh District Council Planning Committee Protocol, December, 2022 (the Protocol).

14. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the Council's administrative actions. While it is not my role to question the merits of a discretionary decision properly taken, I may do so if my investigation identifies maladministration in the process of making that decision.
15. 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.
16. A draft copy of this report was shared with the complainant and the Council for comment on factual accuracy and the reasonableness of the findings and recommendations. I have carefully considered the responses I received.

THE INVESTIGATION

Whether the way the Council determined the application for planning permission was reasonable, appropriate and in line with relevant legislation and guidance.

Detail of Complaint

17. The complainant believed:
 - Valid planning reasons were not given to justify the proposal being called in.
 - An MLA caused the proposal to be deferred from being heard at a Planning Committee meeting on 20 September 2023 because he was denied speaking rights for that meeting. Therefore, the deferral was granted without sufficient cause.
 - The Council failed in its statutory duties to adhere to its planning policies when it made its decision on the proposal. At its meeting on 14 December 2023, the Planning Committee, in departing from the Planning Officer's recommendation to refuse planning permission for the proposal, '*failed to furnish substantive and relevant planning reasons*'. This was not in accordance with the court's judgement in '*Stuart Knox v Causeway Coast and Glens Council*'. The judgement found that Councils in Northern Ireland should

provide adequate, coherent and intelligible reasons for their decisions on planning applications.

- The Council failed to obtain legal advice from its legal officers who were present at the Planning Committee meeting.
- The Planning Committee failed to discuss the remaining reasons for refusal.

Evidence Considered

Legislation/Policies/Guidance

18. I considered the relevant legislation, policies and guidance as noted at paragraph 13.

The Council's response to investigation enquiries

Call In

19. The Council stated that the call-in request by a member of the Planning Committee was *'made in writing and included the planning reference number and a clear planning reason for the call-in request.'*

Speaking Rights and the Request for a Deferral

20. The Council stated that an MLA requested speaking rights for the September meeting. As he requested them after the deadline set out in the Protocol, he was denied speaking rights for that meeting.

21. The Council stated that the Committee will *'generally defer an application only once'* and the member proposing a deferral *'must provide clear reasons as to why a deferral is necessary'*.

Consideration of the Proposal

22. The Council stated that although it is arguable that the applicant did not operate an active farm business, this matter was for the Planning Committee to decide in line with relevant planning policies. The Committee reached its own decision *'which it is entitled to do'* following debate and advice from officers.

23. The Council stated there was *'sufficient evidence'* available to the Council's Planning Committee to allow to *'form the view that there was an active farm business.'* Whilst the complainant did not agree with the Planning Committee's decision, it was *'fully*

within the remit of the Committee to approve the application contrary to both the Officer's recommendation, and the views of the complainant.

24. The Council stated that *'the Council has given clear and cogent reasons for the decision to overturn the Case Officer recommendation'* as set out in the minutes of the Planning Committee meeting.
25. The Case Officer's report sets out four reasons for refusal. In addressing these, the minutes of the meeting *'demonstrate that the Committee carefully and at length considered the evidence before it, together with the competing representations that were made'* and decided to grant permission.
26. The Council stated that an applicant only needs to comply with one of the planning policies outlined in the Housing Development section of the LDP. When one policy is complied with, *'then a dwelling will be acceptable in principle and planning permission granted, subject to compliance with other general policies.'* There is no requirement for an applicant to comply with all, or a number of the policies, within this section. As members resolved that the proposal complied with policy HOU11, *'the other two reasons for refusal fell'*.
27. The Council stated the Planning Committee is supported at each meeting by legal advisors. The Protocol states that *'advice and assistance should be sought from the Council's legal advisers, as necessary'*. Members obtained legal advice from the Council's Solicitor in relation to the contract and financial benefits during the discussion.

The Council's records I attach a summary of the following records at Appendix 2

- Extract from the Planning Committee Minutes dated 14 December 2023.
- Request to have the proposal called in.
- Request for speaking rights.

Analysis and Findings

Call In

28. The complainant believes that no valid planning reasons were given in support of the request to call in the proposal.

29. The Council's fourth draft reason for refusal was that the proposal did not meet Policy HOU 11 'Dwelling on a Farm Business' of the LDP. This was because it *'has not been demonstrated'* that the farm business is *'currently active and has been established for at least six years or there has been a break in the farm business.'* The Council's records show the member made the request to have the proposal called in because he *'believed that there is a farm business operating by this applicant'*.
30. Paragraph 9.1 of the PN states *'referrals to the planning committee should occur only when matters related to planning are raised. Clear planning issues that could warrant referral are those related to, for example relevant national and local planning policy'*.
31. Paragraph 1.1 of the DPPN states that LDPs apply regional planning policies *at the appropriate local level.'* Policy HOU 11 of the LDP is therefore a local planning policy. One of the requirements of the policy is that farm business is *currently active and has been established for at least six years or there has been a break in the farm business*. The Planning Officer did not believe that this requirement was met. The member who requested the call in stated in his request that he believed there *'is a farm business operating'*. The request for the call in was therefore made on the basis of local planning policy.

Speaking Rights and Request for a Deferral

32. An examination of the Council records shows that at 23.29 on 18 September 2023, an MLA emailed the Council to request speaking rights at the Planning Committee meeting on 20 September 2023. Paragraph 1.12 of the Protocol states that *'the deadline for anyone wishing to request 'Speaking Rights' to address the Planning Committee is 5.00 pm on the Monday immediately before the Committee'*. The records indicate that as this request was made after the prescribed deadline, speaking rights were not granted. This is in line with the Protocol.
33. Paragraph 1.17 of the Protocol states that *'Deferrals of decision making can have significant impacts on decision times.'* It also states that deferrals should be *'an exception'*. I understand the objective of this is to restrict the possible misuse of the deferral mechanism to delay the decision-making process.
34. The examination of the Council's records evidence the proposal was initially presented to the Planning Committee on 20 September 2023. At that meeting, the Planning Officer in attendance advised members that he received a request the

previous day to defer the proposal to a later meeting as the applicant was unable to attend the meeting due to a family bereavement. The complainant provided evidence that the funeral occurred on 19 September 2023. He believed that as the funeral was the day before the meeting, the Committee should not have accepted the request for deferral.

35. The Protocol does not give examples of what 'an exception' is. The members appropriately discussed the matter before reaching a conclusion. It is therefore not my role to question the Planning Committee's discretionary decision to defer the application. However, having considered the personal circumstances surrounding the request the Planning Committee acted sympathetically when it made its decision.
36. The complainant believed the MLA, who was refused speaking rights for the September meeting, used the family bereavement to defer the application to allow him to speak in support of the proposal at a rescheduled Planning Committee meeting. However, the records do not provide any evidence to suggest the MLA was involved in the request for a deferral or that this was the reason for the Committee's decision.
37. Based on the evidence available, I have not identified any maladministration in the Council's process of making its decision to defer the application. As such, I do not uphold this element of the complaint.

Consideration of the Proposal

38. The complainant was concerned the Planning Committee did not adhere to its LDP planning policies when it made its decision on the proposal.
39. The Planning Committee considered the proposal at its meeting on 14 December 2023. The Council's records evidence the Planning Officers found the proposal did not meet planning policy requirements as '*it was not demonstrated by the applicant that the farm business was active and established for a minimum of 6 years.*' The records also evidence the Planning Officers presented a paper to the Planning Committee, which contained the applicant's evidence in support of the proposal, the Planning Officers' analysis of it in relation to the relevant planning policies, and third-party objections.

40. The records contain the minutes of the Planning Committee meeting. They record that the applicant, and his supporters spoke in favour of the proposal. The complainant spoke against the proposal. In summary, he stated he disagreed the farm business was currently active and established for the required six years. The Planning Officer spoke against the proposal on occasion and answered a number of questions from members.
41. The minutes record that a Planning Committee member stated that following consideration of the evidence provided by the agent on behalf of the applicant, *'he was assured that there was continuity of control and that there was an active and established farm business for the minimum six-year requirements'*. The member *'acknowledged that the applicant was limited in the evidence that they could provide to demonstrate that they are maintaining the farm and that there were gaps for some of the years.'* Another member agreed and said the insurance document submitted also gave her *'assurance that there was an active farm business.'*
42. The minutes record that Planning Officers also objected to the proposal on the grounds that it would cause *'a detrimental change to the rural character of the area and result in suburban style build up.'* A member of the Planning Committee stated that the proposal was for a dwelling on a farm and *'it would be sited next to a farm group.'* He added that there *'were already a number of houses on this road and that'* in his opinion, *'the proposed dwelling would integrate and complement the rural area.'*
43. Paragraph 29 of the Best Practice states the Planning Committee must reach *'its own decision.'* Planning Officers' views, opinions and recommendations may, on occasion, be at odds with the views, opinions or decisions of the Planning Committee. This is acceptable as there *'should always be scope for members to express different views from officers.'*
44. Paragraph 1.15 of the Protocol also states, *'Where the Committee takes a different decision, it must be backed by sound, clear and logical planning reasons, linked to planning policy.'* I consider this an embodiment of case law as set out in *Stuart Knox v Causeway Coast and Glens*. It states that *'many planning decisions are finely balanced and the Planning Committee will come to its own conclusions, following debate and taking into account all material planning considerations'*.

45. Based on the minutes of the meeting, I am satisfied that following a detailed debate, including a question-and-answer session with the Planning Officer, members provided sound, clear and logical planning reasons, linked to planning policy, why planning permission should be granted for the proposal. I see no requirement in the guidance to suggest that Planning Committee members must go through the evidence themselves.
46. The complainant believed the members should have sought advice from the Council's legal representative during the Planning Committee meeting, especially on the matter of the applicant's farming activities. The Protocol states, '*The Department recommends that the Planning Committee has access to legal advice on planning matters.*' I am satisfied this is a discretionary matter for members. The minutes record that a Council Legal Representative was present throughout the debate. I consider this fulfils the requirement set out in the Protocol. The Legal Representative responded to a query from a member regarding active farming, namely if no '*claims to DAERA within the six-year period for the stated Business ID Number were made, then full accounts could be submitted, with agreements and invoices, which must be considered in detail and a balanced judgement taken as to what these accounts represented*'. She noted this was a decision for Members. I am satisfied this was in line with the Protocol.
47. The complainant also believed the Planning Committee should not have made its decision without first discussing the remaining two draft refusal reasons.
48. The Housing Development section of the LDP, Policies HOU 8 to HOU 17, set out a number of instances where a new dwelling in the countryside is acceptable. The proposal applied for was a dwelling on a farm, which was granted planning permission as the Council was of the opinion it met Policy HOU 11 'Dwelling on a Farm Business'.
49. In its report to the Planning Committee the officer recommended the proposal should be refused planning permission for reasons based upon various policies contained within the Housing Development section of the LDP. The Council stated that an applicant only needs to comply with one of the planning policies outlined in the Housing Development section of the LDP. When one policy is complied with, '*then a dwelling will be acceptable in principle and planning permission granted, subject to compliance with other general policies.*' There is no requirement for an applicant to

comply with all, or a number of the policies, within this section. As members resolved that the proposal complied with policy HOU11, '*the other two reasons for refusal fell*'.

50. I accept the Council's position that as the proposal was accepted in principle under Policy HOU 11, discussion and debate on the other two reasons for refusal, grounded in Policy HOU 13 of the LDP, were not necessary. I am also satisfied that there is no requirement for an applicant to comply with all or a number of the policies within this section of the LDP. The records including a recording of the meeting demonstrate that the Planning Officer advised the Planning Committee that officers applied all of the policies in case an applicant could be successful under a different policy. However, if the proposal met one 'in principle' policy test the other tests set out in different policies would fall away. In other words, the policies are *mutually exclusive*⁷.
51. In summary, the Planning Committee minutes indicate a detailed debate took place on the planning merits of the case regarding a dwelling on a farm. I am content that as the proposal met this policy it was not necessary for the Planning Committee to debate the other two draft reasons for refusal. In addition, I am also content that a legal representative from the Council was present during the debate about the proposal and was consulted when members felt it necessary to do so. Therefore, I am satisfied that the Council acted in accordance with case law, policy and guidance in relation to its discussion regarding the proposal for a dwelling on a farm in accordance with Policy HOU 11 of the LDP. I do not uphold this element of the complaint.
52. I have not identified any maladministration in how the Council managed the proposal. I also have not identified any maladministration that would lead me to question the merits of the Council's discretionary decision on the proposal. As such, I do not uphold this complaint.
53. The LDP policies referred to in the Council's Planning Committee report detail that Policies HOU 11 and HOU 13 have different requirements that must be met in order for proposals to succeed them. For example, Policy HOU 11 requires a proposed dwelling to be on a farm whereas Policy HOU 13 Paragraph 1 stipulates the proposed dwelling must be '*outside a farm*'. By adopting the approach the Council

⁷ Mutually Exclusive -If two things are mutually exclusive, they are separate and very different from each other, so that it is impossible for them to exist or happen together.

has taken, I am somewhat concerned that members of the public may not be given the full opportunity to comment on the substance of a particular proposal if they are unaware of the appropriate policy context under which it is to be considered.

CONCLUSION

54. I received a complaint about the actions of Fermanagh and Omagh District Council. I did not uphold the complaint for the reasons outlined in this report.
55. I appreciate the complainant was disappointed with the outcome of the planning application. However, I hope my report goes some way towards satisfying him that the Council acted in accordance with relevant legislation and guidance.

MARGARET KELLY

Ombudsman

July 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.

