

	<p align="center">Resources and Public Realm Scrutiny Committee 5 November 2024</p>
	<p align="center">Report from the Director of Inclusive Regeneration and Employment</p>
	<p align="center">Lead Member(s) - Cabinet for Regeneration, Planning & Growth (Councillor Shama Tatler) Cabinet Member for Environment and Enforcement (Councillor Krupa Sheth)</p>
<p>Findings of the Local Government Ombudsman regarding a failure to attach a condition to a 2012 planning consent</p>	

Wards Affected:	Kingsbury
Key or Non-Key Decision:	Not Applicable
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
List of Appendices:	Two Appendix 1: Local Government Ombudsman decision Appendix 2: DM Process flow chart
Background Papers:	None
Contact Officer(s):	David Glover Head of Planning and Development Services E-mail: David.glover@brent.gov.uk

1.0 Executive Summary

- 1.1 Planning permission was granted in May 2012 for the change of use of a site in Kingsbury Road to tyre fitting, storage and car wash. Within the planning report it stated that a condition requiring the turning area to be kept clear was necessary, however this condition did not get put on to the decision letter. A complaint was subsequently received highlighting that vehicles were reversing down the access road to Kingsbury Road because the area supposed to be used for turning was not being kept clear.

- 1.2 Last year the Local Government Ombudsman found fault in the way that the Council dealt with this planning application back in 2012 and recommended that actions were undertaken to ensure that this is less likely to happen again. This comprised an a) apology to the complainant for the disappointment and frustration caused by the fault; b) a review of the council's practices and procedures; and c) the consideration of whether the council has any power to require safe vehicular access to and from the site. The Ombudsman has recommended that the outcomes are reported to the relevant council oversight and scrutiny committee in relation to actions a) an apology to the complainant; and b) a review of the Council's procedures and practices.
- 1.3 These steps have been carried out. A formal apology was sent to the complainant on 4th January 2024 and the Council's procedures have been updated to include specific references to the need to ensure that all relevant and necessary conditions are attached. This report examines the process and procedures that were in place at the time of the decision and examines the Council's current procedures and identifies improvements to minimise the risk of future error or oversight.

2.0 Recommendation(s)

2.1 That Scrutiny note

2.1.1. The findings of the Ombudsman.

2.1.2 That all actions that were recommended by the Ombudsman have been carried out and there are no further specific recommendations.

3.0 Detail

3.1 Contribution to Borough Plan Priorities & Strategic Context

3.1.1 Planning decisions contribute to a number of Brent's Borough Plan Priorities, with the decision on the 2012 planning application specifically contributing to:

- Prosperity and Stability in Brent – in relation to the need to support businesses to ensure that they can thrive.
- A cleaner, greener future – in relation to the objective to keep Brent on the move;

3.2 Background

3.2.1 Planning permission was granted on 10 May 2012 for the change of use of a property adjacent to the complainant's business premises to tyre fitting, storage and car wash. The safe movement of vehicles within the site was evaluated. It was set out within the officers report for the application that a condition should be attached to the consent which requires the turning area to be kept clear in order to allow vehicles to turn within the site and therefore enter and exit in a forward direction. However, a condition was not attached to the planning permission which required the area to be kept clear.

3.2.2 A complaint was received which highlighted that this area was not being kept clear and because of this, vehicles were leaving the site by reversing down a long access to the public highway. The complainant highlighted that this was dangerous and not what the case officer had intended when they wrote their report.

3.3.3 The Local Government found fault in the way that the Council dealt with this application in the omission of the condition. The following was set out in the decision of the Ombudsman:

21 *In their report, the case officer said an area should be kept clear to allow vehicles to enter and leave the site in a forward gear, but the Council did not require this. There was an intention to assert planning control, but this did not happen. This is fault.*

22. *When we find fault, we need to decide whether an injustice was caused to the individual who complained to us. We also need to decide whether further action is needed to avoid the same fault happening again in the future.*

23. *From my discussion with X and reading their emails and letters, it is clear they are disappointed and frustrated by what has happened. The Council should apologise for the fault I have found.*

24. *A condition requiring a turning area was for maintaining safe public access to and from the site. It was not intended to benefit X as an individual business operator. Because of this, I will not recommend any personal remedy beyond an apology.*

25. *However, the fault I have found might happen again. I will ask the Council to review its practice and process in light of this complaint and make any changes that are necessary.*

3.3.4 Three actions were recommended by the Ombudsman in relation to this fault. This comprised an a) apology to the complainant for the disappointment and frustration caused by the fault; b) a review of the council's practices and procedures; and c) the consideration of whether the council has any power to require safe vehicular access to and from the site. The Ombudsman recommended that the outcomes in relation to actions a) and b) to the relevant council oversight and scrutiny committee. These recommendations have been implemented.

3.3.5 This report focuses on the review of the council's practices and procedures as the Council's constitution states that "*the terms of reference of the scrutiny committees exclude matters concerning individual applications for consent, permission, approval, registration or grants. Examples include but are not limited to individual planning and licensing decisions*"

3.3.6 The decision which was made in May 2012. At this time, the Council had processes in place relating to the checking of reports, recommendations and

conditions. Checklists were produced for the files (which were in hard copy) covering a range of quality assurance control. However, while some process notes were available for officers, the Planning Service did not have an end-to-end process manual and the processes weren't as accessible as they would ideally be.

- 3.3.7 With regard to the decision making process, the 2012 application was checked by the Area Manager and determined by the Head of Area Planning (positions now known as the Development Management Area Manager and Development Management Service Manager). Robust measures were therefore in place to ensure that the reports and recommendations are checked. However, no guidance was in place for decision makers other than the general quality control checklists.
- 3.3.8 In the 12 years since this decision was made, the Development Management service has been through several audits. This included two Brent Council Internal Audits which were carried out by the Council's audit team in 2016 and 2021, independent of the Planning Service. The Local Government Association also carried out a Planning Improvement Peer Challenge in 2016. While no issues were raised regarding the processes that were place in relation to conditions, these audits together with other internal improvement projects have resulted in the introduction of quality control mechanisms built into its practices and systems to minimise the chances of error or oversight. This includes mechanisms to prevent certain documents being produced (e.g. draft decision notices) if key actions have not been undertaken. It also includes warnings that appear on the system under pre-defined situations (e.g. if the number of objections exceeds the threshold for planning committee but a delegated decision type has been selected, or if the consultation end date has not yet been reached). Further to this, a number of intranet based quality control webpages were established to allow issues to be identified.
- 3.3.9 It is set out in government guidance that planning conditions must meet specific legal tests and be necessary, relevant to planning, relevant to the proposed development, enforceable, precise and reasonable. Because of this, conditions will vary from one consent to another. However, certain application types were identified where the suite of conditions that were applicable to all decisions for certain application types and our system was updated to automate the addition of these conditions. However, this approach could not be taken for all conditions and process manuals play a key role in ensuring that all necessary actions are undertaken by both the case officer and the decision maker.
- 3.3.10 A detailed end-to-end procedure manual was produced in 2021 alongside process flow charts to replace the checklists that were previously used. These provide both structured information to ensure thorough and consistent training and also act as reference guides to ensure that the policies and procedures are followed. This manual has been updated over time to reflect necessary changes and improvements to policies and procedures.
- 3.3.11 Following the receipt of the ombudsman's decision, these processes and procedures were reviewed by Planning Management, and the processes were

updated to include further information and reminders regarding the requirements for planning conditions and reasons for refusal. A two step process is already in place to ensure that all reports, recommendations and conditions / reasons for refusal are checked by a person with appropriate delegated authority, with IT system controls in place to ensure that this happens.

3.3.12 It was considered that the overall process is robust with appropriate checks in place to minimise the risk of error. This is also evidenced by the very small number of issues that have resulted from the Council's planning decisions (with between 4,500 and 5,500 planning decisions made each year). Nevertheless, the inclusion of further reminders at key stages of the process was considered to be a valuable addition.

3.3.13 Following the review, it was considered that the Council's policies and procedures are considerably stronger than they were in 2012, with additional resources available to officers and a greater number of quality control mechanisms. It was considered beneficial to add additional information to the process guides and this was undertaken following the review. The DM Process flow chart has been appended to this report which forms a part of the full manual and provides an overview of the process.

4.0 Stakeholder and ward member consultation and engagement

4.1 No consultation or engagement is required in relation to the Ombudsman decision.

5.0 Financial Considerations

5.1 None.

6.0 Legal Considerations

6.1 None.

7.0 Equity, Diversity & Inclusion (EDI) Considerations

7.1 No specific equalities, diversity or inclusion considerations have been raised in association with the Ombudsman decision.

8.0 Climate Change and Environmental Considerations

8.1 There are no climate change or environmental considerations associated with this Ombudsman decision.

9.0 Human Resources/Property Considerations

9.1 There are no human resources or property considerations associated with this Ombudsman decision.

10.0 Communication Considerations

10.1 There are no communications considerations associated with this Ombudsman decision.

Report sign off:

Gerry Ansell
Director of Inclusive Regeneration and
Employment