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**REPORT OF OMBUDSMAN ON COMPLAINTS REGARDING A PLANNING  
MATTER AND A LICENSING MATTER**

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**Responsible Cabinet Member(s) - Councillor John Williams, Leader**

**Responsible Director(s) - Paul Wildsmith, Acting Chief Executive  
John Buxton, Director of Development and Environment**

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**Purpose of Report**

1. To consider action to be taken by the Council in response to a report from the Local Ombudsman on complaints number 03/C11999 and 03/C1337 against the Council in relation to a planning matter and a licensing matter related to Darlington Football Club premises.

**Summary**

2. Under the Local Government Act 1974 the Council is required to consider any report from the Ombudsman in which maladministration causing injustice has been found in response to a complaint made to the Ombudsman. Complaints were made that the Council :-
  - (a) Failed to ensure compliance with an agreement attached to the planning consent for the development of the new stadium for Darlington Football Club, and
  - (b) Failed properly to consider subsequent applications for public entertainment licences for the football stadium.

In respect of the planning aspects, the Ombudsman has concluded that permitting the opening of the stadium without a number of matters included in the Section 106 Planning Agreement, such as a subsidised bus service, a residents parking scheme etc., and failing to seek an injunction to prevent the stadium opening without such compliance was maladministration. In respect of the licensing matters, the Ombudsman concluded that there was maladministration in the way in which the Council had dealt with applications for public entertainment, as a result of which there have been an increase in the hours permitted by the public entertainment licences and as a direct consequence of this local residents have suffered disturbances late at night. The report from the Ombudsman suggests a number of remedies to deal with those failures. A copy of the Ombudsman's report is attached as an appendix to this report.

**Information and Analysis**

3. The nature of the complaints have been set out in the previous paragraph. The Ombudsman has carried out an investigation, as a result of which she has found that although the Council had been placed in a very difficult position with the then owner of the Football Club who,

seemingly, gave assurances which were not kept, the Council did not do enough to protect local residents. Those residents had a legitimate expectation that the Council would protect their residential amenity by ensuring compliance with the planning consent and the Section 106 Agreement attached to it. The Ombudsman considers that the Council made a mistake in allowing the stadium to open without those measures being in place and that the Council should have sought an injunction to prevent the stadium opening. Comment on that finding from the Council's officers follows later in this report.

4. The Ombudsman also found maladministration by the Council in the way in which it had dealt with applications for public entertainment. As a result, the Ombudsman considered that there had been an increase in the hours permitted by the public entertainment licences and that local residents had suffered as a consequence.
5. The report has been issued by the Ombudsman in accordance with legal requirements without referring to the real names of individuals concerned. That confidentiality must be respected and no reference should be made to the real names of individuals nor to factors which might help to identify individual complainants, despite the fact that there has been some press publicity. That has not emanated from the Council itself. The fictitious names are Mrs. Wilkinson and Ms. Underwood.
6. The investigation process involved the Ombudsman considering detailed comments submitted on behalf of the Council and carrying out interviews with complainants, Members and officers of the Council. As a result of the investigation, in accordance with normal practice, the Ombudsman issued a draft report inviting comments on factual matters contained in the report and any other issues. At that stage, the outcome of the investigation was not determined nor was there any indication of any remedy which might be being suggested if injustice had been caused. A number of comments were made in response to the draft report. Subsequently the final report was issued dated 25th April, 2005. The recommendations regarding the way in which the Council ought to react to the report need to be considered carefully.

### ***Relevant Statutory Provisions***

7. As this is only the second report finding maladministration causing injustice made by the Ombudsman against this Council, it may be useful to remind Members of the legal provisions relating to the consideration of the report. Section 31 of the Local Government Act 1974 provides that where the Ombudsman reports that injustice has been caused to a person in consequence of maladministration, that report must be laid before the Council concerned and it is the duty of the Council to consider the report and within the period of three months beginning with the date on which they received the report, or such longer period as the Ombudsman may agree in writing, to notify the Ombudsman of the action which the Authority have taken or propose to take. Additionally, the Ombudsman requires the publication of the report to be advertised in two newspapers circulating in the locality within a period of two weeks from issue of the report, indicating that a copy of the report is available for inspection for a period of three weeks from a date specified in the advertisement. That advertisement has been placed in the Northern Echo and the Darlington and Stockton Times on 7th and 13th May 2005 respectively and the report has been on deposit from 9th May, 2005.

8. Section 31 goes on to indicate that if the Ombudsman does not receive notification from the Local Authority of the action which the Authority has taken or proposes to take on the report within that three month period or is not satisfied with the action which the Authority concerned has taken or proposes to take or does not within a period three months beginning with the end of the initial period of three months, or any longer period agreed by the Ombudsman, receive confirmation from the Local Authority concerned that they have taken action proposed to the satisfaction of the Ombudsman, the Ombudsman will make a further report setting out those facts and making recommendations. Those recommendations are those which the Ombudsman thinks fit to make with respect to action which in her opinion the Authority concerned should take to remedy the injustice and prevent similar injustice being caused in the future. Again, that report has to be advertised in at least two local newspapers, at the expense of the Local Authority, and the Local Authority has a further period of three months in which to consider the further report.
9. If no satisfactory action is taken, in the opinion of the Ombudsman, in response to the further report or if the Ombudsman does not receive confirmation that the Authority have taken action as proposed to the satisfaction of the Ombudsman, the Ombudsman can serve a notice on the Local Authority requiring them to arrange for a statement to be published in the local press. That statement will be in an agreed format but will consist of details of any action recommended by the Ombudsman in her further report which the Authority have not taken, such supporting material as the Ombudsman may require and, if the Local Authority so require, a statement of the reasons for their having taken no action on, or not the action recommended in, the report.
10. That statement must be published in any two editions within a fortnight of a newspaper circulating in the locality as agreed with the Ombudsman and that publication has to be in the first of those editions on the earliest practicable date. If agreement cannot be reached between the Authority and the Ombudsman, the Ombudsman has power to arrange for a statement to be published, the cost of that to be reimbursed by the Local Authority.

### ***Remedies***

11. It is usual for the Ombudsman to suggest remedies which the Council ought to consider to put right the injustice arising from the maladministration and that she has done on pages 27 and 28 of her report. For convenience, paragraphs 110-115 are reproduced here.
  - (a) The introduction of the TROs on the trunk road may have a knock on effect on parking and traffic problems around the area that the Council needs to address to avoid residents suffering further traffic problems around their homes.
  - (b) The Council should work with the club to promote increased use of public transport by home and away supporters with a view to ensuring a reduction in the traffic problems around the stadium.
  - (c) The Council should meet with the Residents' Association to discuss the traffic and parking problems and agree a more robust scheme for implementation and monitoring of the scheme. The Council should consult local residents with a view to extending the scheme to all matches, not just those shown on the fixture list where attendance of over 5,000 is predicted.

- (d) The Council should review its procedures to ensure that information on liquor licences is available to the Licensing Committee when it considers entertainment licences for premises that have liquor licences. The Council should also monitor the operation of the licences to ensure that the extended hours do not cause significant problems for residents.
  - (e) The Council should make the payment of £200 already offered to Mrs. Wilkinson and extend payment to Ms. Underwood who was similarly affected the failures. The Council should also ensure that the procedural improvements recommended through its own investigation of this matter are implemented to avoid similar complaints in the future.
  - (f) In addition, in recognition of the time and trouble they have taken in pursuing the complaints about planning consents and enforcement, the Council should make a payment of £250 each to Mrs. Wilkinson and Ms. Underwood.
12. Discussions have subsequently taken place with the Ombudsman in relation to the proposed remedies arising from the complaint in respect of planning aspects. In that context, the Council's officers have reiterated the view that the action taken by the Council in respect of enforcement of the planning agreement was appropriate in all the circumstances. Certainly the option of seeking an injunction to prevent the stadium opening was considered but the likelihood of a court agreeing to grant the injunction was felt to be remote. The circumstances which were particular to this case were that the new football stadium was ready for opening in terms of sports ground safety and the existing football stadium at Feethams was no longer suitable for those purposes. Consequently, if an injunction had been sought and granted, the Club would not have been in a position to fulfil its fixtures, beginning in August 2003. The reasonableness of some of the outstanding conditions and terms of the planning agreement was also taken into consideration. With the benefit of hindsight, some of those requirements were excessively onerous and unnecessary in the context of this development. Consequently it did appear to the Council's officers inappropriate to seek the draconian remedy of an injunction, taking all circumstances into account. Clearly, the Ombudsman has taken a different view.
13. On the details of the remedies, the Ombudsman has been made aware of the fact that there are, in the Council's officers views, no significant parking or traffic problems around the area at the time when matches are played but that if any were to develop they would be considered in the same way as traffic problems elsewhere. The Ombudsman considers that it would be helpful for the Council to establish a dialogue with local residents, including the complainants, to establish whether they take the same view and that genuine engagement with local residents is the way forward. Although efforts have been made in the past to establish that kind of dialogue, further efforts will be made to consult on an ongoing basis. Current action is as follows :-
- (a) Evidence consistently shows very little impact by traffic on residents at present levels of attendance at the ground. Residents parking schemes have been implemented, even though they were not in place for the opening of the stadium.
  - (b) There are no traffic issues which the Council currently needs to address as far as the Council is aware. The Council will continue to assess traffic and transport and when appropriate will require Darlington F.C. to implement appropriate park and ride

facilities and additional traffic management measures.

- (c) On promotion of public transport, the Council is working with the club and the measures currently adopted by the club are considered to be generally satisfactory. The Council would continue to advise the club on best practice. A bus service to and from the ground to the town centre is in place.
- (d) Although there is no evidence that would support the hypothesis that a more robust scheme is needed on traffic and parking given the present levels of attendance levels, and in actual fact, contrary to what is said in the report from the Ombudsman, the residents parking scheme does cover all matches on the fixture list regardless of attendance levels, the point is taken that residents might have more confidence in the Council's processes if they were more closely involved and, as indicated previously, efforts are being made to contact representatives of local residents with a view to implementing some ongoing dialogue.
- (e) As regards the licensing matters complained of, the procedures for providing information on liquor licences and monitoring the operation of licences to ensure that the extended hours do not cause significant problems for residents have been reviewed and appropriate procedures are now in place. Similarly, procedural improvements recommended through the Council's own internal investigation into this aspect have been implemented and revised procedures are in place. Until the introduction of the new licensing regime under the Licensing Act 2003, licensing officers will require applicants for entertainment licences to provide a copy of their justices licence. Officers will check the operational hours on the justices licence against the application for a Public Entertainment Licence and seek to resolve any discrepancies. In relation to monitoring the operation of licences, again until the new licensing regime operates, the Licensing Section will include within its "in performance inspection" compliance with conditions attached to public entertainment licences. This will include premises where applications to extend licensing hours have been permitted. With the introduction of the new licensing regime, there will be a unification of all licences and all existing premises will require a new licence from the Council. Applicants will be able to apply for variations to existing conditions and will have to publish their intention in a local newspaper. This will enable local residents to make representations to the Council when considering an application. With regard to monitoring in the new regime, the Council is developing a risk assessment scheme for inspections, which will include premises where public nuisance could occur (one of the four principles in the Licensing Act). Residents will also have the ability to request the Licensing Committee to carry out a review.
- (f) As regards the monetary recompense suggested, the Council is recommended to approve such payments being made; Members will note that an offer of payment has already been offered to one of the complainants but that has been held in abeyance with the agreement of the complainant once the complaint was referred to the Ombudsman.

### ***Recommended Action***

14. The Council is invited to note and agree the contents of this report, the Ombudsman's report and in particular the suggested remedies to be implemented.

## **Outcome of Consultation**

15. No consultation has been considered in relation to this report.

## **Legal Implications**

16. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

## **Section 17 of the Crime and Disorder Act 1998**

17. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

## **Council Policy Framework**

18. The issues contained within this report are required to be considered by Council as the matters complained of are matters which fall outside the role of Cabinet.

## **Conclusion**

19. The Council found itself in a very difficult position as the date of the opening league fixture in season 2003/04 approached, a point acknowledged by the Ombudsman. On the planning complaint, whilst the Council's officers concluded at the time that seeking an injunction would not have been appropriate, the Ombudsman takes a different view. That view is not so unreasonable as to warrant the Council not accepting the findings. On the licensing complaint, deficiencies have already been acknowledged following a local investigation and revised procedures introduced. The Ombudsman's report as a whole should be accepted.

## **Recommendation**

20. Council are requested to :-
  - (a) Accept the report of the Ombudsman and appropriate action be taken to remedy the injustice as outlined in this report.
  - (b) Note the procedural changes which have already been effected to deal with matters arising from the complaint on licensing.
  - (c) Agree the action currently being taken as set out in paragraph 13 above, in particular the steps to strengthen dialogue with the public locally on the impact of activities at the stadium.

## **Reasons**

21. The recommendations are supported by the following reasons :-

The findings of the Ombudsman should be accepted in the absence of any fundamental flaw in the report and appropriate action should be taken to remedy any injustice.

**Paul Wildsmith**  
**Acting Chief Executive**

**John Buxton**  
**Director of Development and  
Environment**

### **Background Papers**

- (i) Report of Ombudsman and covering letter of 25th April 2005.
- (ii) Note Assistant Director Public Protection to Director of Development and Environment 11th May 2005.

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