

APPENDIX

# Report

on an investigation into  
complaint no 06/C/05668 against  
Darlington Borough Council

11 December 2008

# Investigation into complaint no 06/C/05668 against Darlington Borough Council

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

This report has been produced following the examination of relevant files and documents and interviews with the complainant and relevant employees of the Council.

The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

## Report summary

### Planning Applications

Mr and Mrs B live in a conservation area on the main street near the centre of a village. They complain that the Council failed to deal properly with applications for a development next door to them that involved converting some listed agricultural buildings into homes, demolishing others and building new houses.

The Ombudsman's investigation found that Council officers did not seem to understand the description of the buildings in the listing; did not apply the legal definition of a listed building and so did not require an application for listed building consent; did not address themselves to the appropriate national planning policies and guidance; and did not notify English Heritage and the National Amenity Societies.

The reports on which the Planning Area Committee made its decisions were deficient. In particular, the report on which it decided to approve demolitions and conversions of the listed buildings failed:

- to correctly identify the buildings that were listed;
- to explain the general presumption in favour of preserving listed buildings;
- to clearly explain the proper tests for the committee to apply as set out in national Planning Policy Guidance 15 and confirmed by case law, i.e. first: will the proposed works significantly harm the listed building or its setting; second: if so, are the works desirable or necessary?;
- to provide the information necessary to apply the second test;
- to include a highly relevant point from an earlier decision by a Planning Inspector.

These failings were eclipsed by an earlier and fundamental flaw of not properly considering the applicant's justification for the demolition of part of a listed long barn. In an earlier decision, a Planning Inspector had judged the long barn to be an important component part of a group of buildings that '*... possess, in my assessment, considerable group value, both in terms of the appearance and history of the village. They belong to a group...this group provides an important focal point within the village with the appearance of each building reflecting its origin and function...*'

Having initially failed to require a justification, the planning officers then resisted English Heritage's recommendation to obtain one, and did not properly examine and consider the justification that was eventually obtained.

The justification for the partial demolition was to comply with the Council's requirements as Highway Authority about the width of the access road. This was based on an, unchallenged, 'requirement' originally specified by a Council Highways Officer that had not been required in other cases.

The Council has subsequently agreed an alternative access and approved an alternative development without the partial demolition of the long barn.

Evidence shows the Council was willing to investigate matters thoroughly; admit that errors have been made; and do its best to rectify these errors. The Chief Executive became personally involved and her approach was an exemplar of good practice and professionalism. Regrettably, other officers did not live up to her expectations or the assurances that she gave.

The Ombudsman found that the Council acted with maladministration as the multiple and various failings by the planning officers meant that the Planning Area Committee was not properly advised and not able to take all relevant factors into account when reaching its decisions.

The Ombudsman concluded that the Council would not have approved the partial demolition of the long barn if the Committee had been properly advised. However, she did not believe that the Council would have refused permission for other aspects of the development.

## **Finding**

Maladministration causing injustice, remedy agreed.

## **Remedy achieved**

In part Mr and Mrs B were very upset about the potential loss of the long barn that formed an important part of the character of their village. That loss has now been avoided but only because of their indefatigable efforts.

Mr and Mrs B were put to a great deal of time and trouble in pursuing their complaint with the Council and this is the injustice caused to them by the Council's maladministration. The Council had already offered £500 to Mr and Mrs B in recognition of their time and trouble and the Ombudsman confirms that is an appropriate remedy.

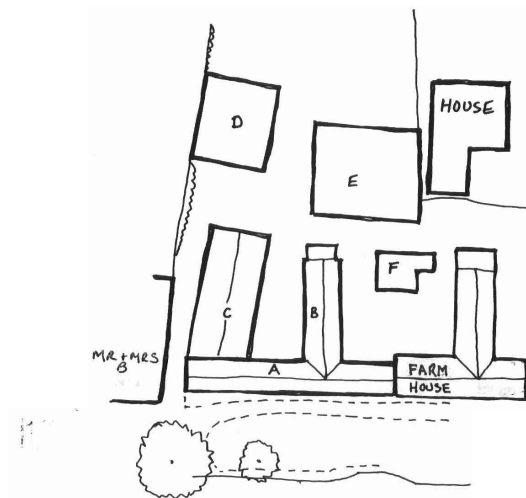
The Council says it has restructured and strengthened its planning function and reviewed its practices. The Ombudsman urges it to also ensure that all staff involved in dealing with development control decisions are properly trained in the law and its own policies and procedures relating to listed buildings.

## Introduction

1. Mr and Mrs B live in a conservation area on the main street near the centre of a village. The properties on the street are set back and separated from the road by the village green - a broad strip of grass owned by the parish council. Next to their property, and also fronting the village green, is a listed Grade 2 Georgian farmhouse with an attached long barn with a rear extension; an agricultural building attached to the barn and three detached agricultural buildings. A narrow access track that includes a public footpath runs between the side of the long barn and Mrs and Mrs B's property.
2. Mr and Mrs B complain that the Council failed to deal properly with applications to carry out development and demolition next door to them and, in particular:
  - failed initially to request a Listed Building Consent application;
  - failed to consult English Heritage about the planning application;
  - unreasonably and inconsistently required widening of the existing access to the rear of the site;
  - unreasonably granted planning permission for the development and Conservation Area Consent for the demolition of some of the buildings;
  - prevented its own Conservation Officer from commenting freely on a subsequent Listed Building Consent application; and
  - failed properly to consider objections to the Listed Building Consent application and unreasonably granted such consent.
3. They say (said) that, as a result, they will suffer a loss of privacy and evening sunlight to their garden; (part of the village green near them may be lost); their trees are likely to be damaged; the character of the village will be adversely affected; and they have been put to unnecessary time, trouble and expense pursuing their complaints to the Council and to me.
4. Mr and Mrs B are bitterly opposed to the scale and form of the proposed new-build development next door to them and have complained about other aspects. As I have found no maladministration in the way that the Council dealt with those aspects I have not included them in this report.

## Background

- The listing describes details of the farmhouse but not of the long barn. It states that 20<sup>th</sup> Century farm building 'on left return' and 20<sup>th</sup> century additions on rear and wing are 'not of interest'. The building 'on the left return' is building C. Although building B is separately identified on the diagram attached as an appendix it is the rear extension to the long barn.



- Section 1 (5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 says:

*'... "listed building" means a building...and for the purposes of this Act—*

- any object or structure fixed to the building;*
- any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948,*

*shall be treated as part of the building.'*

- This means that, together with the house, the long barn, building B and all the other buildings apart from one were listed.

8. Under various sections of: the Planning (Listed Buildings and Conservation Areas) Act 1990, Planning Policy Guidance 15 – Planning & The Historic Environment, and Circular 01/01 Arrangements for Handling Heritage Applications, the fact that the buildings are listed and in a conservation area means that:
- any planning application relating to them and that affects the character or appearance of the conservation area must be specially publicised<sup>1</sup>;
  - any proposals for demolition, alteration, or extension need ‘listed building consent’<sup>2</sup>;
  - in considering any planning application that affects the buildings or their settings, the Council must have special regard to the ‘...*desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*’.<sup>3</sup>
  - English Heritage should be notified of various proposals, including any change of use for a development affecting the character or appearance of the Conservation Area and with a site area of over 1,000 square metres<sup>4</sup>;
  - the Georgian Group and the Victorian Society (and three other National Amenity Societies) should be notified of applications for listed building consent ‘...*for works for the alteration of a listed building which comprise or include the demolition of any part of that building*’.<sup>5</sup>
  - the Council must take account of any comments made by English Heritage and the amenity societies;
  - there should be a general presumption in favour of the preservation of listed buildings except where there is a convincing case for alteration or demolition<sup>6</sup>.
9. Although buildings in conservation areas generally cannot be demolished without ‘conservation area consent’, this is not needed for buildings that are listed and therefore need listed building consent<sup>7</sup> or buildings built after 1914 and used or last used for agriculture<sup>8</sup>.

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<sup>1</sup> Section 73 of the Act

<sup>2</sup> Section 7 of the Act

<sup>3</sup> Section 66 of the Act

<sup>4</sup> Sections 67 & 73 of the Act and paragraph 8 Circular 01/01

<sup>5</sup> Section 15 of the Act and paragraph 15(1)(ii) of Circular 01/01

<sup>6</sup> PPG 15 paragraph 3.3

<sup>7</sup> Section 75 of the Act

<sup>8</sup> Paragraph 31 of Circular 01/01

10. It is a criminal offence to demolish or alter a listed building without consent.<sup>9</sup>

## Planning History

11. In September 2003 the Council refused to give planning permission and Conservation Area Consent for a proposal to demolish the long barn and all the other agricultural buildings and to build four, two-storey terraced houses in place of the long barn and two detached two-storey houses at the rear.
12. In commenting on the applications the Council's Assistant Design & Conservation Officer wrote:

*'A group of farm buildings appear on the proposal site on the 1<sup>st</sup> edition Ordnance Survey map dating from 1856. The layout and fabric of the existing buildings suggest that they include substantial sections of this recorded range; .....*

*The frontage range...has a simple, uncluttered appearance that clearly identifies it as a functional farm building associated with and subservient to the listed farmhouse. Its simple agricultural character makes a positive contribution to the mix of buildings that form part of the architectural and historic character of the ...Conservation Area...'*

13. These comments were reflected in the report to the Planning Committee recommending that the application should be refused for reasons that included;

*'The single storey linear farm building fronting the Green and attached two storey element to the rear make a positive contribution to the architectural and historic interest of [village] which has a history of village farms. The loss of the farm buildings will lead to the erosion of the features which will give the village and the Conservation Area its special character...'*

14. The applicant appealed and in October 2004 a Planning Inspector dismissed the appeal and upheld the Council's refusal. In his decision letter the Inspector said that it would be difficult to object to the proposal for two detached houses on the rear of the site. However, of the long barn / Building B he said they:

*'...form an important architectural and historic feature at the heart of the Conservation Area...*

*...are one of the last reminders of the agricultural origins of the village...*

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<sup>9</sup> Sections 7 & 9 of the Act.



*...possess, in my assessment considerable group value, both in terms of appearance and history of the village...*

and, that a wider nearby group to which they belong:

*...provides an important focal group within the village with the appearance of each building reflecting its origin and function...*

*...within this group the (long barn) is an important component within the village scene.'*

### **The applications that gave rise to the complaint**

15. In spring 2005 the Council received applications for planning permission and Conservation Area Consent to:

- demolish part of the long barn in order to widen the access track;
- convert the rest of the long barn and building B to 3 houses;
- demolish the other farm buildings to the rear;
- build two detached houses at the rear.

16. The Council's Conservation Officer commented on the applications, advised the Planning Officer that the applications should be advertised as affecting the setting of a listed building, and recommended conditions. He did not recommend that the applications should be refused.

17. The Planning Officer's report on the planning application to the Planning Applications Committee meeting of 13 July 2005 states:

*'The main element of the scheme in terms of the character and appearance of the locality is the treatment of the barn fronting The Green. The existing building has a simple and utilitarian appearance that is considered to contribute to the character and appearance of the area. Aside from the demolition of the eastern end portion of the building, the proposal leaves this frontage largely unchanged...*

and, referring to the Council's duty to have regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area:

*...it is considered that the scheme would act to preserve the character and appearance of the Conservation Area, and at the very least have a neutral effect on the character of the area, which would achieve the minimum test required under the Act. Furthermore, it is not considered that the proposal*

*would cause harm to the setting of the adjacent listed building.'*

18. The officer recommended that planning permission should be granted with conditions and the Committee approved the recommendation.
19. A separate report to the same meeting of the Committee dealt with the application for Conservation Area Consent to demolish part of the long barn and the more modern farm buildings. The report said:

*'The sole issue for consideration in the determination of this application is whether the proposed demolition would materially harm the character and appearance of the [village] Conservation Area. The principal of the demolition of the buildings to the rear of the site has been established at appeal...'*

and

*An issue raised by objection was the listed status of the attached farmhouse and the need for Listed Building Consent for any alterations to the barn. However,...an application for Listed Building Consent is not required for the proposed development. The building is not within the curtilage of the listed building...'*

20. The officers were wrong about the listed status of the buildings – all but one were listed – the long barn / Building B by virtue of being attached to the Grade 11 listed farmhouse and the others by being within the curtilage of the farmhouse since before 1948. The Council should, therefore, have required a Listed Building Consent application for the proposed demolition of part of the long barn; for the alterations to the long barn and to building B; and for the demolition of the other listed buildings. Instead the Council proceeded, wrongly, to deal with the application for Conservation Area Consent.
21. The Georgian Group and the Victorian Society should have been notified because the proposal involved demolishing part of a listed building. The Council did not notify any amenity society.
22. English Heritage should have been notified of the planning application because it affected the character or appearance of a conservation area, involved a material change of use of the buildings and the site was more than 1,000 square metres. The Council did not notify English Heritage.
23. The officers' mistake about the status of the listed buildings meant that, despite being alerted by Mr and Mrs B, they did not consider or draw the Committee's attention to the guidance in paragraphs 3.3 and 3.16 of Planning Policy Guidance 15, that:

*'While the listing of a building should not be seen as a bar to all future change, the starting point for the exercise of listed building control is the statutory requirement on local planning authorities to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'... This reflects the great importance to society of protecting listed buildings from unnecessary demolition and from unsuitable and insensitive alteration and should be the prime consideration for authorities in determining an application for consent.*

and

*While it is an objective of Government policy to secure the preservation of historic buildings, there will very occasionally be cases where demolition is unavoidable. Listed building controls ensure that proposals for demolition are fully scrutinized before any decision is reached...'*

24. The fact that the applicant had not applied for and received Listed Building Consent meant that he could be prosecuted if he undertook the work.

### **Events after the 2005 applications were approved**

25. Mr and Mrs B complained to the Council about a number of aspects of the way that it had dealt with the applications, including the failure to require an application for listed building consent and the failure to consult English Heritage.
26. An exchange of correspondence took place to March 2006 during which the Council acknowledged that it should have required an application for Listed Building Consent and should have consulted English Heritage. After maintaining that the Committee's decision would not have been any different, the Council eventually conceded that it would: ask for an application for Listed Building Consent, deal with such application in the normal way and consult with English Heritage. The Chief Executive stressed: *'...the intention is that any application for Listed Building Consent will be processed using established procedure and I would therefore regard it as 'real' and not simply a paper exercise.'*

### **Application for Listed Building Consent**

27. The Planning Officer's letter asking for a Listed Building Consent application said: *'...I can, however, advise that I can foresee no valid planning reason to withhold a grant of Listed Building Consent, as the issue of the desirability of preserving the building or its setting, or any special architectural or historic features that it possesses, was addressed at planning application stage and required by the Act. The officer view informally is then that it would be perverse to arrive at any other decision given the matters considered at the planning application stage...'*

28. The Conservation Officer initially wrote, apparently in response to a request for his comments on the application for Listed Building Consent: *'As this application is a new submission replicating the previous application, which has been granted listed building consent and Planning permission, I have no further observations to make regarding this proposal.'*
29. Paragraph 2.12 of Planning Policy Guidance 15 stresses the importance and advantage of concurrent consideration of related applications for planning permission and for listed building or conservation area consent ***'...if an authority is asked to consider a planning application in isolation, a decision on that application cannot be taken as predetermining the outcome of a subsequent application for listed building consent...'***
30. English Heritage was informed of the Council's failure to notify it of the planning application and invited to comment on the application for Listed Building Consent. English Heritage made a number of recommendations including that:
- in accordance with paragraph 3.4 of national Planning Policy Guidance 15, the applicant should be invited to submit a justification statement for the proposed partial demolition of the long barn, explaining why the works are desirable or necessary and providing evidence that alternative options have been explored;
  - the applicant should be asked to submit a design statement explaining what has influenced the architectural form of a proposed extension.
31. Some weeks before the application for Listed Building Consent was to be considered by the Committee, Mr and Mrs B wrote to the Council's Chief Executive expressing concern that proper consultation was not taking place. Mr B referred to a conversation Mrs B had with the Conservation Officer who had said he'd been told by the Planning Officer that it would be 'perverse' to change his views. The Conservation Officer told Mrs B that, as a consequence, he had not made further comments about the scheme. Mr B also referred to a conversation Mrs B had with the Planning Officer who had re-iterated her view that the Council could not change its comments for the scheme for which it had granted planning permission, and would be vulnerable to Judicial Review if it did so.
32. Three days after Mr and Mrs B wrote to the Chief Executive, the Council's Conservation Officer provided some further comments to the Planning Officer. He referred to the list description, quoted *'[The] 20thC farm building on left return and 20thC additions on rear and wing are not of interest.'* and went on to make recommendations about detailed matters relating to openings in one dwelling, an elevation, external surfacing treatments, roof lights, timber windows, and brickwork.

33. A report on the application for Listed Building Consent was put to the Planning Applications Committee meeting on 1 June 2006. The report states the reason for the proposed partial demolition of the long barn is to give vehicular access to the rear.
34. The report recorded the earlier error of failing to consult English Heritage and that this had now been done. It advised that officers did not think it necessary to act on English Heritage's recommendation to require a justification statement for the proposed demolition of part of the long barn and alterations to existing windows and a design statement as '*...officers are satisfied that sufficient detail has been submitted with the planning application in order to come to an informed recommendation*'.
35. The Committee deferred the application to '*...enable the views of English Heritage to be sought*'.
36. English Heritage confirmed its previous comments on the application for Listed Building Consent. Responding to the Planning Officer's request for comments that it would have made on the planning application if it had been consulted, English Heritage said '*...our comments on the planning application would have taken a much broader view than the current listed building consent application and, in particular, would have focused on assessing the impact of the proposed development upon the character and appearance of the conservation area and upon the setting of the neighbouring listed buildings.*'
37. The Committee deferred the application twice more - for the applicant to submit a justification statement and to consult the Georgian Group and the Victorian Society.
38. The Georgian Group objected to the partial demolition of the long barn and other aspects of the proposed development. Save Britain's Heritage also objected as did the Campaign for the Protection of Rural England which quoted from the Planning Inspector's decision to refuse the 2003 planning application and said '*...It is appreciated this current application is for a partial demolition, but part of the value of the building is in its large expanses of brickwork and part of this would be lost...*'
39. The application was finally considered at the Planning Committee meeting of 20 September 2006. Referring to the responses received and comments that Mr B had made orally at the June meeting, the report to the Committee says:

*'Officers do not consider that additional information introduces any further material planning considerations that would alter the recommendations previously made. The original recommendation was based on control considerations of national and local policy and with the*

*advice of the Council's Conservation Officer, and, was the result of previous negotiation with former Conservation Officers and comments of a planning inspector who dealt with an appeal on the site. For the purposes of clarity, the planning issues are considered in more detail in the following sections of this report.'*

40. The report went on to advise, correctly, that case law had established that in the context of listed buildings 'demolition' means demolition of substantially the whole of the building and that, when this was not proposed, applications involving demolition should be considered in the same way as applications to alter or extend a listed building. However, it did not inform the Committee about the general presumption in favour of preservation. Parts of the report show that officers had studied historic maps of the site and the brickwork of the long barn in order to establish its likely age. The report did not identify that the long barn was a listed building and says:

*'The agricultural building is, in the view of officers, of no significant architectural or historic interest...*

*The loss of the 3.7m of this single storey range will not, in the opinion of officers, have a detrimental impact on the setting of the Grade II listed (farmhouse)...*

*...officers have been mindful of the findings of the planning inspector and it has been necessary to carefully balance the benefits of the redevelopment and ultimate continued use of the buildings, with a development that provides an acceptable level of access and amenity for its future occupiers. It is considered that the proposal in its current form, has achieved this balance and does not have a detrimental impact on the listed building, or its setting, or any architectural or historic interest that it possesses...*

*...The Council's Conservation Officer raises no objections to the demolition of part of the barn, which he feels plays no part in the setting of the principal listed building...'*

41. The Committee approved the application for listed building consent.

### **The reason for proposing to demolish part of the long barn**

42. The applicant's statement justifying the proposals was attached to the Committee Report submitted to the September meeting. It included the statement:

*'To comply with the requirements of your Highways Authority to construct an access road to an adoptable standard, we have included the following design criteria, road 4.100 wide, verge 0.500 wide and pavement 1.800 wide. This required the part demolition of the eastern gable to the [long barn]*

*We have kept the demolition works to an absolute minimum...'*

43. Objections to the application were summarised in the report including one that commented on the impact of the proposed access on the village green and said *'The only reason for partial demolition of the barn is to provide an adoptable width access road, more than double its current width. This is totally unnecessary – the existing access has served the needs of a working farm and transport business and the restriction in width were the barn to be fully retained, would only be for the length of one car...'*
44. The report to the Committee advised: *'The remaining objections raised are not of relevance in terms of the specific matters to be considered in this current listed building submission. These concerns relate to the necessity for a new access road to serve the dwellings, and the crossing of the village green. Having considered the impact of the demolition of part of the frontage range, it is not considered that the creation of the new access would have any impact on the architectural or historic interest of the building...'*
45. The Council's traffic manager was consulted when the first applications (that were unsuccessful at appeal) were made in 2003. He said then that the access should be a total of 6.4 metres wide (4.1 metres wide carriageway plus a 1.8 metre footpath on one side and a 0.5 metre verge on the other).
46. The traffic manager's requirement met with the Government's 1992 Design Bulletin 32 'Layout of Residential Roads and Footpaths' which recommended a width of 4.1m in such situations and said that a minimum of 2.75m should be provided. The Institution of Civil Engineers explains that *'...it is necessary to ensure that [fire] appliances can reach within 45m of a suitable entrance to any dwelling via a road of at least 2.75m width...'*
47. A 1998 companion guide to the Design Bulletin - 'Places Streets and Movement A Good Practice Guide' advised that:
  - the layout of housing areas should be based on the nature of the local place rather than the rigid requirements of vehicle movement;
  - advice from the Institution of Civil Engineers should be interpreted flexibly with more responsiveness to site and setting in new developments and a better balance between highway requirements and other factors;
  - there should be a move away from overly prescriptive standards;
  - design of new and upgrading of existing housing areas should take account of the advice in 'Places Streets and Movement';
  - 'Too often new developments have been designed around the requirements of the car.'

48. North East Regional Planning Guidance issued in November 2002 said:

*'The character of historic settlements and the countryside can be marred by rigid application of highway design standards...'*

49. As one of the Teeside Local Authorities, the Council adopted a 'Design Guide and Specification' produced in 1998 and amended in 2004 which said that no more than 5 properties may be served by a private access that must be a minimum of 4.1m wide.
50. In March 2002 the Council approved a planning application for residential development on another part of the village green with an access width of some 2.6 – 2.9 metres. Although a traffic manager had recommended a width of 4.1 metres he did not press for it because the access as proposed was wide enough for emergency access and a width of 4.1 metres could not be achieved across the village green.
51. The 2005 Planning and Conservation Area Consent applications for the development next door to Mr and Mrs B showed the access with a total width of 6.4 metres and the traffic manager did not object.
52. The Traffic Manager points out that he was only presented with proposals in the applications and not with an option that retained the existing access width.

### **Subsequent events**

53. Mr and Mrs B continued to express their concerns and further complained that the Council was not properly consulting on the Listed Building application. The Chief Executive asked one of the Council's Policy Advisors to investigate further on her behalf and he produced a report on 30 October 2006. The Chief Executive wrote to Mr and Mrs B saying that she concluded that the decisions taken on the planning application and listed building consent were soundly based although procedural mistakes were made and were being put right.
54. After further exchanges of correspondence, the Chief Executive met Mr and Mrs B in their village. She then wrote to them making it clear that she was not satisfied that they had had the service they ought to have had from the Council and repeating the apology that she had made to them in person. She explained her view that it was not appropriate to revoke the planning permission and her reasons for not accepting in full the report of her Policy Advisor. She said the issue of the width of the access had been examined and it had been found that the existing track was 2.67m at its narrowest point compared with the 2.95m width allowed on the nearby development and the 2.75m minimum National Highway Guidance suggestion. The Chief Executive noted that Mr and Mrs B had rejected



her offer of £500 for their time and trouble in pursuing their complaint and undertook to look favourably at any reasonable claim based on the actual time that they had spent.

55. Mr and Mrs B said the width measurements quoted by the Chief Executive were wrong and provided the results of measurements they had taken. They responded to her request for an estimate of their costs, valuing their time at £15 per hour amounting to £11,000 plus £388 for legal costs.
56. An earlier draft of this report was sent to the Council and Mr and Mrs B for comment. It recommended that the Council should urgently seek independent advice about whether it should revoke or modify the planning permission and listed building consent that authorised the partial demolition of the long barn.
57. Eventually the Council and the developer were able to agree a way of accessing the site from the rear. Planning permission for that access was granted in February 2008. Also the previous planning permission was modified to remove the element of the permission allowing for demolition of part of the long barn.

## **Conclusions**

58. There is no doubt that the way that the Council dealt with the 2005 applications for planning permission and conservation area consent were seriously flawed. Officers did not apply the legal definition of a listed building and so did not require an application for listed building consent and did not address themselves to the appropriate national planning policies and guidance. The Committee were, therefore, not properly advised and not able to take all relevant factors into account when reaching its decisions to approve the planning and conservation area consent applications. It appears that the officers also had difficulty in understanding the description of the buildings in the listing (which is not particularly clear).
59. In response to Mr and Mrs B's complaints the Council acknowledged that it had been wrong not to require an application for listed building consent and tried to rectify the situation. The Chief Executive gave an assurance that any application for listed building consent would be 'real' and not simply a paper exercise. Despite this, planning officers both communicated to others and acted in the belief that it would be 'perverse' for the Council to refuse listed building consent having already approved planning permission and conservation area consent. This was not only wrong but also gives the impression that people with a central role in the decision making process were approaching the issue with closed minds.
60. At interview, the Conservation Officer confirmed to my investigator that he was not influenced by other planning officers' comments to him and had no objection

to the partial demolition of the long barn because it had a purely neutral value. The views of the Conservation Officer appear to differ markedly from those expressed earlier by the Planning Inspector (in a slightly different context), the previous Conservation Officer, the Georgian Group, the CPRE, and, to some extent, English Heritage.

61. The Committee that dealt with the listed building consent application was entitled to rely on the advice of its own professional advisors providing that it was also informed of and considered other views. The difference of views between the officers advising the Committee and the previous Conservation Officer and external bodies is not, of itself, sufficient evidence for me to conclude that the Council acted with maladministration in reaching its September 2006 decision to approve listed building consent. There were flaws in the earlier reports (about the listed building consent application) to the Committee but these had no impact because the Committee deferred a decision until it was satisfied that it had sufficient information.
62. The report about the listed building consent application to the September meeting of the Committee can be criticised for:
  - failure to clarify that the listed buildings were the farmhouse and the long barn / Building B and not just the farmhouse;
  - lack of a clear explanation of the proper tests for the Committee to apply as set out in PPG 15 and confirmed by case law, i.e. first: will the proposed works significantly harm the listed building or its setting; second: if so, are the works desirable or necessary?;
  - failure to tell the Committee of the general presumption in favour of preserving listed buildings;
  - failure to provide the Committee with the information necessary to apply the second test i.e. assess whether the access needed to be widened;
  - quoting some of the Planning Inspector's comments but omitting: '*The long barn and Building B possess, in my assessment, considerable group value, both in terms of the appearance and history of the village. They belong to a group...this group provides an important focal point within the village with the appearance of each building reflecting its origin and function.....Within this group the (long barn) is an important component within the village scene.*'
63. As a consequence at least one member of the Planning Applications Committee wrongly thought the decision should be based on the effect on the farmhouse of the proposed partial demolition. The case officer said she and her colleagues did not feel demolition of part of the long barn would have a significant impact on the farmhouse and they made their decision on that basis.

64. The Council's records show that the Council's solicitor who advised on planning suggested various changes to the committee report some of which were not included in the final report. His suggestions included comments that he thought it was unlikely the Council could conclude '*...there is no harm to the building in LB terms...*' and '*Needing an access per se is not sufficient grounds for authorisation – another potential error*'.
65. The decision to approve listed building consent was taken on the basis of a deficient report. The possible effect of this is eclipsed by a fundamental flaw of failure to give proper consideration to the applicant's justification statement for the partial demolition. This flaw occurred in the wider way in which officers dealt with all the 2005 applications for the site, the advice given to the Committee and, hence, its decision.
66. Having initially failed to require a justification, the planning officers then resisted English Heritage's recommendation to obtain one. The officers did not properly examine and consider the justification that was eventually obtained. Questions should have been asked about the required access width when a narrower access had been allowed on another development nearby. It would then have become apparent that it was not necessary to demolish part of the long barn in order for the development to go ahead.
67. Mr and Mrs B are deeply upset by their experience of dealing with the Council over this matter and I appreciate why this is so. However, the evidence that I have seen shows that the Council corporately, has been willing to investigate matters thoroughly; admit that errors have been made; and do its best to rectify these errors. The Chief Executive's approach to their complaint seems to me to be an exemplar of good practice and professionalism. It is regrettable that other officers did not live up to her expectations or the assurances that she gave.

## Findings

68. The Council acted with maladministration in reaching its July 2005 decisions to approve the applications for planning permission and conservation area consent, because:
- the officers did not appreciate that all the buildings (apart from one) were listed;
  - applications for listed building consent were not required and so were not considered in accordance with national planning policy;
  - the Council did not fulfil its statutory obligation to consult English Heritage, the Victorian Society and the Georgian Society and could not take into account any comments made.

69. The Committee were, therefore, not properly advised and not able to take all relevant factors into account when reaching its decisions.
70. The Council acted with maladministration in reaching its September 2006 decision to approve the application for listed building consent because no proper consideration was given to the applicant's justification for partial demolition of the long barn which was based on an, unchallenged, 'requirement' originally specified by a Council Highways Officer that had not been required in other cases.
71. I am satisfied that the Council would not have approved the partial demolition of the long barn if it had approached the issues properly i.e. consulted English Heritage about the planning application; correctly interpreted the listing; applied the legal definition of a "listed building"; applied the tests set out in national planning guidance and thereby, critically examined the highway "requirement" that underlay the proposed partial demolition.
72. Mr and Mrs B have been put to a great deal of time and trouble in pursuing their complaint. In part they were very upset about the potential loss of part of a feature that formed an important part of the character of their village. That loss has now been avoided but only because of their indefatigable efforts.
73. The Council's Chief Executive's original offer of £500 in recognition of Mr and Mrs B's time and trouble is an appropriate remedy. The Council has confirmed that it remains willing to make that payment to them.
74. I note that the Council has restructured and strengthened its planning function and reviewed its practices. I urge it to also ensure that all staff involved in dealing with development control decisions are properly trained in the law and its own policies and procedures relating to listed buildings.

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**11 December 2008**