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|  | Executive 24 August 2020 | Agenda Item No. 6 |
| Title | The Outcome of a Local Government Ombudsman (LGO) Investigation into the Consideration of a Planning Application | |
| For further information about this report please contact | Gary Fisher, Development Manager, Development Services E: gary.fisher@warwickdc.gov.uk T: 01926 456502 | |
| Wards of the District directly affected | All | |
| Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006? | No | |
| Date and meeting when issue was last considered and relevant minute number | N/A | |
| Background Papers | LGO Final Report | |

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| Contrary to the policy framework: | No |
| Contrary to the budgetary framework: | No |
| Key Decision? | No |
| Included within the Forward Plan? (If yes include reference number) | No |
| Equality Impact Assessment Undertaken | No, not applicable |
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| Officer/Councillor Approval | | |
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| Officer Approval | Date | Name |
| Chief Executive/Deputy Chief Executive | 22/7/20 | Chris Elliott |
| Head of Service | 22/7/20 | Dave Barber |
| CMT | 22/7/20 | Chris Elliott, Bill Hunt, Andy Jones |
| Section 151 Officer | 22/7/20 | Mike Snow |
| Monitoring Officer | 22/7/20 | Andy Jones |
| Finance | 22/7/20 | Mike Snow |
| Portfolio Holder(s) | 22/7/20 | Cllr John Cooke |
| Consultation & Community Engagement | | |
| N/A | | |
| Final Decision? | Yes | |

1. **Summary**

- 1.1 This report summarises the recent outcome of an investigation by the LGO and sets out the actions that are being taken in response to that.

2. **Recommendation**

- 2.1 Executive are recommended to note the content and recommendations of the LGO report (which is included at Appendix 1); note this report and endorse the actions being taken as set out at paragraph 3.4.

3. **Reasons for the Recommendation**

- 3.1 In their final report dated 15 June 2020, the Ombudsman has found fault causing injustice in respect of the consideration of a planning application for a residential development in Barford.

- 3.2 The decision on that application was made on 14 September 2017 following consideration by Planning Committee and the subsequent completion of a legal agreement.

- 3.3 In summary, the Ombudsman found that: -

- i. The decision was made without sufficient information about how the development would impact upon protected species. This is because the application was determined prior to the undertaking of any protected species survey work and therefore before there was sufficient baseline data on the impact on such species contrary to national guidance.
- ii. The Committee report was insufficiently detailed in the way that the law and guidance on protected species and the response of the County Council's Ecology team was summarised.
- iii. In presenting the application to Planning Committee, no reference was made to the Council's differing view of the ecological advice received from the County Council.
- iv. Those omissions therefore had the potential to mislead Planning Committee and resulted in a significant material planning matter not being properly considered.
- v. Whilst detailed protected species survey work was undertaken following the grant of planning permission, site clearance work had begun by then and it was therefore not possible to know the extent of any impact from the outset or consider possible alternative means of ameliorating any such impact.
- vi. Whilst the Council intended to require the developer to provide compensation and/or offsetting for biodiversity loss arising from the development through a legal agreement, in error this did not happen and there has therefore been harm to the environment as a result.
- vii. Contrary to the complainant's assertion, the Council had not failed to properly protect their privacy.

- 3.4 As a result of those findings, the Ombudsman has recommended that within 3 months of the date of their report, the Council take the following actions: -

- i. Apologise to the complainant for failing to properly protect the environment.
- ii. Provide details (to the ombudsman) of a review of its procedures for the undertaking of legal (Section 106) agreements.

- iii. Remind Officers and Members involved in planning matters: -
 - That planning decisions should not be made until they have all of the information necessary to make their decisions;
 - That reports should include sufficient details about significant material planning considerations, so that it is clear from council records that decision-makers are properly informed, and decisions properly made;
 - That when planning officers disagree with the recommendations and advice of statutory consultees or others with relevant expertise, they ensure that there is a record of their reasons for disagreement on the planning file and in their report; and
 - Of the details of its revised section 106 procedures to ensure that decisions and intentions are carried through into decisions and planning obligations;
 - iv. Pay £1,000 to the Warwickshire Bat Group to enhance or promote the environment for bats; and
 - v. In consultation with the ecology service, provide 8-10 suitable hibernation boxes for bats on land it controls.
- 3.5 From the outset of the receipt of the complaint into the above matters, which were investigated internally first prior to being considered by the Ombudsman, officers have acknowledged the error in respect of the omission of an ecological offsetting requirement from the legal agreement in this case.
- 3.6 Revised procedural measures are already in place to ensure that no such requirements are omitted again in error moving forward.
- 3.7 Officers responded in detail to the Ombudsman during the course of their investigation and commented at length on the issues that had been raised.
- 3.8 Prior to the publication of the outcome of their investigation, the Ombudsman's findings and recommendations were accepted and are currently being progressed with the intention that they will all have been completed and reported to the Ombudsman within 3 months of the decision on the complaint.
- 3.9 In that respect, Executive are requested to note that the headline matters identified in bullet point iii. of the list of recommendations were never in dispute, and that the learning points identified by the Ombudsman in this case were matters of interpretation and detail rather than principle.
- 3.10 With regard to the undertaking of the ecological survey work which forms one of the Ombudsman's main criticisms of the Council, Executive are also requested to note that in this particular case, Officers made a judgement as to the appropriateness of the timing of that work with which the Ombudsman has disagreed.
- 3.11 The drafting of the committee report and the manner in which the application was presented to Planning Committee were, of course undertaken with the intention of ensuring that the Committee had all of the information that they needed to make a decision in respect of which the Ombudsman has made recommendations.

3.12 However, it is essential that in striving to continually improve and fine tune its procedures, the Council is open to criticism and feedback in cases such as this and in that respect, the Ombudsman's findings are welcomed and as indicated above being taken on board and actioned within the timescales indicated.

3.13 Finally, the LGO report is being shared with the Internal Audit team in order that they can monitor progress in completing the recommendations included therein.

4. **Policy Framework**

4.1 **Fit for the Future (FFF)**

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

| FFF Strands | | |
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| People | Services | Money |
| External | | |
| Health, Homes, Communities | Green, Clean, Safe | Infrastructure, Enterprise, Employment |
| <u>Intended outcomes:</u> Improved health for all Housing needs for all met Impressive cultural and sports activities Cohesive and active communities | <u>Intended outcomes:</u> Becoming a net-zero carbon organisation by 2025 Total carbon emissions within Warwick District are as close to zero as possible by 2030 Area has well looked after public spaces All communities have access to decent open space Improved air quality Low levels of crime and ASB | <u>Intended outcomes:</u> Dynamic and diverse local economy Vibrant town centres Improved performance/ productivity of local economy Increased employment and income levels |
| Impacts of Proposal | | |
| As well as being important for its own sake, the quality of wildlife and the environment contributes towards the overall health and well-being of residents. It is therefore | Planning decisions impact upon the quality of the environment and the protection of wildlife. Ensuring that those decisions take account of all such relevant | The proposal is directed at the protection of wildlife and the environment which itself contributes towards the quality of the residential environment and in turn contributes to the economy and the |

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| important to ensure that planning decisions are made in a manner which has due regard those matters. The measures summarised in this report are intended to ensure that remains the case. | considerations to protect the environment and wildlife contribute to the quality of open areas and thereby the quality of life within the district. | value of Warwick District's distinct environment. |
| Internal | | |
| Effective Staff | Maintain or Improve Services | Firm Financial Footing over the Longer Term |
| <u>Intended outcomes:</u> All staff are properly trained All staff have the appropriate tools All staff are engaged, empowered and supported The right people are in the right job with the right skills and right behaviours | <u>Intended outcomes:</u> Focusing on our customers' needs Continuously improve our processes Increase the digital provision of services | <u>Intended outcomes:</u> Better return/use of our assets Full Cost accounting Continued cost management Maximise income earning opportunities Seek best value for money |
| Impacts of Proposal | | |
| The proposal highlights to WDC officers the importance of ensuring that our procedures operate effectively and the importance of external feedback in that respect. | The measures set out arise from concerns raised by a customer in highlighting areas where the service can be improved. | In ensuring that services operate appropriately and effectively, the measures proposed may reduce the likelihood of future challenges and complaints in respect of planning decisions thereby also reducing the likelihood of any associated costs and claims. |

4.2 Supporting Strategies

Planning legislation and national guidance along with national and local planning policies are directed at ensuring that planning decisions are made having regard to all relevant material considerations including the protection and safeguarding of the natural environment and wildlife.

5. Budgetary Framework

- 5.1 The costs associated with recommendations iv. and v. are intended to funded from the Planning Reserve.

6. Risks

- 6.1 There is a risk that non-compliance with the Local Government Ombudsman's recommendations would have a reputational impact on the Council.
- 6.2 The failure to ensure that procedures are kept under ongoing review and that external constructive criticism and feedback is fully considered and adopted where appropriate introduces a risk of the reduced effectiveness and value for money of services.

7. Alternative Option(s) considered

- 7.1 As indicated above, as part of continual service improvement it is important to reflect on feedback such as this and therefore it would not be appropriate to consider the alternative option of not doing so.