

# Report

on an investigation into  
complaint no 12 008 423 against  
Isle of Wight Council

12 December 2012

# **Investigation into complaint no 12 008 423 against Isle of Wight Council**

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

## **Key to names used**

Mrs J      The Complainant

## **Report summary**

### **Planning & Development**

The Council granted planning permission for beach huts and the planning Committee instructed residents be consulted on the proposed management plan. Council officers approved a management plan without consulting residents. It cannot be concluded the management plan would have been different had residents been consulted, but they are left not knowing for certain if the outcome would have been different.

### **Finding**

Maladministration causing injustice; remedy agreed.

### **Recommended remedy**

The Council has agreed to:

- apologise to Mrs J;
- pay Mrs J £250 for the time and inconvenience in pursuing the complaint and for the lost opportunity to influence the decision;
- ensure its new procedure means minutes are checked and a note made of that check before signing off compliance with conditions in future;
- take the results of its review on compliance monitoring to councillors for comment.



## **Introduction**

1. The complainant complained the Council failed to:
  - comply with the Planning Committee's instructions to consult with the public on a management plan;
  - carry out a public consultation before approving a management plan;
  - impose through the management plan sufficient controls to restrict the use of a beach hut development.
2. This has left the complainant dissatisfied that her home will be affected by disturbances occasioned by the lack of controls.
3. An officer of the Commission has spoken with the complainant, made enquiries of the Council and studied the responses given.

## **Legal and administrative background**

4. Under the Town and Country Planning Acts councils must consider all planning applications against the guidance set in national and local planning policies, guidance and practice notes.
5. Councils must give publicity to planning applications and consider the responses received.
6. Decision notices and planning permissions should accurately reflect Committee instructions.
7. Councils may discharge planning conditions when satisfied the developer has met requirements of the conditions. Where those conditions require further approval by councillors in committee, or where a council fails to ensure full compliance, the discharge is still legally valid but there may be maladministration.

## **Investigation**

### **The key facts**

#### **Planning application for beach huts**

8. The complainant, Ms J, lives in a small community on the island. A developer put in a planning application to build fifteen beach huts, with a car and dinghy park. The beach huts would provide secure storage for small craft with a second floor providing a kitchen, shower and toilet.

9. Councillors visited the site, and received 25 objections and a letter of concern from the local councillor.
10. Objections included concerns the beach huts provided potential overnight accommodation and residential use.
11. The Council put the application to councillors in committee.
12. The officer's report identified the main considerations as:
  - the site's position outside the development envelope;
  - the proposed use in this location;
  - the impact of the development on a Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), Wetland Site of International Importance ("Ramsar Site") and a nature reserve;
  - the design, scale and mass of the development on the character of the area.
13. The report recommended approval of the application with conditions attached:
  - limiting occupation of the beach huts to between 6am and 11pm;
  - forbidding use of the beach huts between 1 October and 31 March;
  - requiring approval of a management plan by the Council before using the beach huts.

#### **The planning decision**

14. The Council granted a conditional planning permission for fourteen huts stipulating in the Minutes of the Committee meeting on 24 March 2009 that:

"...a formal consultation exercise be undertaken on the Management Plan, if no objections were raised in relation to the Management Plan officers would be given authority to approve it and commencement would go ahead. If during consultation legitimate planning considerations were raised then the application would be brought back to the Planning Committee for consideration..."
15. Councillors clearly intended public consultation on the Management Plan.
16. The Management Plan would govern:
  - hours of use;
  - the extent of the season;

- conditions for use of the beach huts as temporary daytime accommodation.

### **The Management Plan**

17. The developer submitted a Management Plan to officers. They consulted with other departments in the Council and signed off the Plan, discharging the planning condition. The developer could now go ahead with his development.
18. The Council did not undertake a public consultation exercise. It did not consult residents or the Parish Council on the Plan.
19. The approved plan does not repeat the hours of occupation or seasonal limits but requires owners:
 

“...to comply at all times with the conditions of any planning permission...”
20. Planning conditions may be appealed. Planning permission may be gained in future to relax planning conditions or make changes. Ms J feels the Management Plan therefore gives far less protection than it would if it imposed the conditions as part of the transfer documents.
21. The Council's monitoring systems did not alert the Chief Planning Officer, the Chair of the Planning Committee or the Committee Clerk service supporting the committee to the failure to consult. Compliance monitoring did not include checking the authority for the action in the minutes.

### **Council's admission of fault**

22. In responding to Ms J's complaint the Council told her:
 

“Within the spirit of the decision taken by committee there should have been public consultation on the draft management plan. Whilst officers have agreed the management plan and signed it off, there has been no public involvement in this process. This is regrettable and I apologise for the error as this is an inadvertent omission from the process as a consequence of the planning case officer dealing with the condition compliance issues being unaware of the committee minute requiring further consultation. The minutes of the Committee meeting had not been placed in the relevant file...”
23. It seems when signing off the Management Plan nobody checked the Committee minutes to confirm compliance with the councillors' clear instructions.
24. The Council has since amended its procedures to prevent this happening again.
25. In response to my enquiries the Council says Condition 16 of the Condition Notice incorporates the occupation conditions because it says:

“The development hereby approved shall not commence until a management plan has been submitted to and approved in writing by the Local Planning Authority. The said management plan shall include the management and maintenance of the beach huts and Dinghy Park, including measures to ensure compliance with the occupation conditions, appropriate lighting, security and crime prevention and the appropriate recycling/disposal of rubbish....”

## **Conclusions**

26. Councillors decided this application on the basis officers would consult the public on the Management Plan. It may be that if consultation had taken place the same Management Plan would be approved. We shall never know.
27. Public confidence in councils is damaged where officers do not act in line with the instructions given by councillors in committee. The Council failed to carry out a clear instruction from councillors. No checks or balances in the process alerted the case officer or senior officers to this failing.
28. The explanation for the failure is the Council had not placed the Minutes in the planning file. The Minutes are available in more than one place. In procedural terms it should not be possible to sign off the Management Plan without first checking authority for it in the Minutes. Some system of flagging up the need for public involvement should have been implemented at the time the Committee made this decision.
29. The failure to have an appropriate process and procedure involving senior officers checking the authority given in the minutes is maladministration.
30. The failure to consult the public on the Management Plan as required by councillors in committee is maladministration.
31. The injustice to residents is they will never know if their responses to the intended consultation may have led to a different outcome. As it is they now rely on discretionary planning enforcement powers to protect them from breaches of the conditions of use. The Council says all enforcement is discretionary but planning enforcement has its own criteria.
32. Such failings weaken public confidence in the planning system. The Council recognised its failings and apologised. It needs to do more to prevent this happening again.

## **Finding**

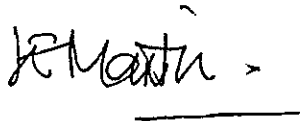
33. For the reasons given in paragraphs 29-30 above I find there has been maladministration causing the injustice outlined in paragraph 31.



34. To remedy this injustice I recommended the Council:

- apologises to Ms J;
- pays to Ms J £250 for her time and inconvenience in pursuing the complaint and for her lost opportunity to influence the decision;
- ensures its new procedure means minutes are checked and a note made of that check before signing off compliance with conditions in future;
- takes the results of its review on compliance monitoring to councillors for comment.

35. The Council has agreed to my recommendations.

  
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**12 December 2012**