



## Ombudsman Decision 20 003 006 Report of the Monitoring Officer

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<b>Report to:</b>	<b>Council</b>
<b>Meeting date:</b>	<b>15 July 2021</b>
<b>Ward(s):</b>	<b>n/a</b>
<b>Key Decision:</b>	<b>No</b>
<b>Appendix 1:</b>	<b>LGO decision dated 10 May 2021</b>

### Recommendation that Council notes:

- The Ombudsman Decision on complaint 20 003 006 of Mr X that the council was at fault and that the fault caused injustice.
- The remedial actions taken to address the injustice as set out in the report in paragraph 4.2.

### Background, corporate objectives and priorities

#### 1 Executive Summary

- 1.1 This report details the decision of the Ombudsman in relation to Mr X in compliance with the Monitoring Officers statutory duty under section 5(2)(b) of the Local Government and Housing Act 1989.

### Glossary of terms

Term	Definition
CIL	Community Infrastructure Levy
LGO	Local Government and Social Care Ombudsman

## **Main considerations**

### **2 Executive Summary**

- 2.1 The council has received a Decision from the Ombudsman, attached in full at Appendix1, upholding a complaint made by an applicant (Mr X) into how the Council handled his liability for CIL in respect of his development. It concludes with a finding of fault causing injustice. This decision triggers the Monitoring Officers duty to report the Decision to Council.

### **3 The Role of Council**

- 3.1 The Monitoring Officer has a statutory duty to report to Council Ombudsman decisions where there is maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974. Section 30(1B) of the Local Government Act 1974 provides that where a Local Commissioner completes an investigation on a matter under part 3, and he is satisfied with the action which the authority concerned have taken, and that it is not appropriate to prepare and send a copy of a Report under subsection 1, he may instead prepare a statement of his reasons for the decision and send a copy to each of the persons concerned.
- 3.2 The Ombudsman's decision has therefore been issued under section 30(1B) as a statement of reasons rather than as a formal Report under section 30(1) which would be used for the most serious cases and which gives rise to an obligation for publication of the report and consideration by Council of that report within 21 days of receipt. Whilst the decision finds fault causing injustice to the complainant the Ombudsman is satisfied with the remedy that has been agreed by the council to address the injustice and therefore hasn't issued a formal report. There is no requirement for formal publicity of the decision other than as set out by this report.

### **4 The Decision and actions taken in response.**

- 4.1 The decision found that incorrect information had been included by the council in the Community Infrastructure Levy report leading to an incomplete Decision Notice. The ombudsman accepted that Mr X would have downsized his plans had he known about his CIL liability. The agent acting for Mr X failed to advise Mr X of his CIL liability and for this reason the Ombudsman did not hold the Council wholly responsible for the injustice that Mr X suffered.
- 4.2 The agreed action was to:
- Reduce the amount payable by Mr X for CIL liability by half, to £14,637.64;
  - Cancel all outstanding invoices for accrued late payment surcharges; and
  - Notify Mr X in writing of the revised sum owing.

- 4.3 These actions have been taken by the Head of Planning Sustainability and infrastructure under her delegated powers. The council sent out the amended liability notice and demand notices on 1 June 2021 and all outstanding invoices for accrued late payment surcharges have been cancelled.
- 4.4 The Ombudsman has been advised that the agreed action has now been completed.

## **Corporate implications**

### **5 Legal**

The legal implications are set out above.

### **6 Financial**

The CIL liability is set out above.

### **7 Risk management**

A risk assessment has been completed in accordance with the council's risk management process and has identified no significant (Red or Amber) residual risks that cannot be fully minimised by existing or planned controls or additional procedures.

### **8 Equalities**

There are no equality implications.

### **9 Consultation and communication**

All members will receive a copy of this report.

### **10 Climate change**

There are no climate implications to this report.

### **11 HR**

There are no HR implications.

### **12 Conclusion**

Council is asked to note the action taken to remedy the injustice caused by the faulty handling of the CIL Decision Notice.

### **13 Summary and reason for the decision**

To note the Ombudsman's decision and the action taken to remedy the injustice.

## 14 The options considered and rejected

There is a statutory duty upon the Monitoring Officer to report this decision to Council under the Local Government and Housing Act 1989 as set out previously and therefore, no other option is applicable.

**Date: 15 July 2021**  
**Decision taken by: Council**

<b>Lead officer</b>	Fiona Thomsen Head of Law and Governance and Monitoring Officer
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<b>Version</b>	Final
<b>Dated</b>	5 July 2021
<b>Status</b>	Open
<b>Confidentiality</b>	It is considered that information contained within this report (and appendices) do not contain exempt information under the meaning of Schedule 12A of the Local Government Act 1972, as amended, and therefore can be made public.