Rec 16/9/15

Ombudsman
Ombwdsmon
PUBLIC SERVICES OMBUDSMAN FOR WALES
OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU

Our ref: 201400990
SC/LMC

Ask for: Sinead Cook

01656 641195

Sinead.Cook
@ombudsman-wales.org.uk

Date: 15 September 2015

Mohammed Mehmet
Chief Executive
Denbighshire County Council
Council Offices
Wynnstay Road
Ruthin
Denbighshire
LL15 1YN

Dear Dr Mehmet

Complaint made to the Ombudsman by Mr Guy Evans of Cassidy House, Station Road, Chester, CH1 3DW

The Authority has previously seen and commented on my draft investigation report and has expressly agreed to implement the report's recommendations. The Ombudsman is grateful for the Authority's cooperation in settling this complaint.

I now enclose a copy of the investigation report issued under s.21 of the Public Services Ombudsman (Wales) Act 2005.

Please confirm by 18 October 2015 that the report's recommendations a) to d) have been carried out. I would also be grateful if the Council would advise me that it has carried out recommendation e) on completion of the development

A copy of the final report has also been sent to the complainant and to the Planning Inspectorate.

The Ombudsman's office prepares an anonymised summary of every case investigated. The Ombudsman is obliged to report on the work of his office and the summaries can be used in information published by the Ombudsman from time to time, and may be placed on his website. A copy of the summary prepared about the complaint is included with the investigation report.

Public Services Ombudsman for Wales | Ombwdsmon Gwasanaethau Cyhoeddus Cymru
1 Ffordd yr Hen Gae, Pencoed CF35 5LJ
01656 641150 01656 641199 ask@ombudsman-wales.org.uk www.ombudsman-wales.org.uk

As you will see, the complainant cannot be identified from the information contained in the summary. In most cases a copy of the full report is also available on request to anyone who asks for a copy (again in an anonymised form).

Yours sincerely

Sinead Cook
Investigation Officer/Swyddog Ymchwilio

Ombudsman
Ombwdsmon
PUBLIC SERVICES OMBUDSMAN FOR WALES
OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU

The investigation of a complaint

by Mrs E

against Denbighshire County Council

A report by the
Public Services Ombudsman for Wales
Case: 201400990

Contents	Page

Appendices

Introduction

This report is issued under section 21 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Mrs E.

Summary

Mrs E complained about the manner in which The Council considered a planning for a proposed dwelling on the site to the rear of Mrs E's property. Mrs E said that there was a failure to properly interpret and apply relevant legislation, policy and guidance. She also complained that the Council did not give good reason for deciding the application contrary to policy.

The investigation found that the Council had failed to complete the validation process properly, resulting in the Planning Committee not being aware of the potential scale of the property preventing proper consideration of some of its policies. It also found that members had failed to properly interpret one of the Council's policies, resulting in the classification of the application as infill development.

Recommendations:

a) the Council ensures that its validation process is updated to ensure that it takes into account the statutory requirements set out in article 3 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

b) The Council shares this report with the Planning Committee and arranges additional training for the Planning Committee which encompasses the failings identified in this report.

c) The Council ensures that it accurately records reasons given for decisions taken which are contrary to Officer advice.

d) based upon the findings in this report, the Council considers whether it is appropriate to revoke the permission it has granted.

e) I recommend that if, following on from d), the Council ultimately determined not to revoke, then, within one month of the completion of the development, the Council instructs the District Valuer to assess the impact of the development on Mrs E's properties and pay her an amount

which equates to the difference in value before and after the development.

The Council has agreed to implement the recommendations as set out.

The complaint

1. Mrs E complained about the manner in which Denbighshire County Council's ("the Council") Planning Committee ("the Committee") considered planning application A1, for a proposed dwelling on the site to the rear of Mrs E's property. The site had been subject to two previous applications for a dwelling, both had been refused.

2. Mrs E said that there was a failure to properly interpret and apply relevant legislation, policy and guidance, and that the Council admitted that the proposed development did not comply with policy, but chose to ignore it.

3. Mrs E complained that the Committee failed to fully consider the scale of the development and the impact it would have on the neighbouring properties Red Cottage and Green Cottage. Mrs E owns both properties. She lives in Red Cottage for part of the year and has a long term lease agreement with the tenant of Green Cottage. Mrs E and her tenant both objected to the application.

4. Mrs E also complained that the Committee failed to provide any substantial reasons explaining why the appropriate planning policies and guidance notes had not been adhered to.

5. Mrs E complained that the Certificate of Decision was incorrect because planning permission had not been granted in accordance with policies HSG5,[1] ENV2[2] and SPG 10[3].

6. Finally, Mrs E complained that Councillor A incorrectly interpreted policy and influenced the other Councillors by making reference to non-material planning considerations.

---

[1] Denbighshire Unitary Development plan ("UDP") Policy HSG 5 – Groups of houses in the Open Countryside – Defines infill plot
[2] UDP policy ENV2 – Development affecting the Area of Outstanding Natural Beauty (AONB)
[3] Supplementary Planning Guidance note 10 provides guidance on acceptable infill plots

Investigation

7. I obtained comments and copies of relevant documents from the Council and considered those in conjunction with the evidence provided by Mrs E and the relevant guidance.[4] I interviewed a number of Council Officers and Planning Committee members. I have also received advice from the Ombudsman's Professional Planning Adviser ("the Adviser").[5] All of the documentation has been made available to the Adviser and he has also taken the opportunity to visit the proposed development site in question. I have taken his advice, which I accept in full, into consideration when reaching my conclusions. His advice is summarised in the report and provided in full at Appendix 1.

8. I have not included every detail investigated in this report, but I am satisfied that nothing of significance has been overlooked.

9. Both Mrs E and the Council were given the opportunity to see and comment on a draft of this report before the final version was issued.

10. I am issuing this report under the authority delegated to me by the Ombudsman under paragraph 13(1) of Schedule 1 to the Public Services Ombudsman (Wales) Act 2005.

Background

11. On 27 December 2012, the Council received planning application A1. The application was for outline planning permission for one dwelling on land forming part of the garden of Purple House. The development site is a piece of land which is on the same level as the base of Red Cottage's roof and slopes upwards away from Red Cottage. There is a fence behind Red Cottage and behind the fence is a sports net which is visible from the lane in front of Red Cottage and Green Cottage.

12. The Council regarded the application as invalid and additional information was sought from the applicant on 2 January 2013. Additional information was provided to the council on 29 January 2013. The application was put out for consultation. Objections were received from five neighbouring properties and the Joint Advisory Committee[6] (JAC).

[4] Denbighshire UDP HSG5, ENV2 and SPG 10 and Planning Policy Wales Paragraph 3.1.5
[5] The advice has been attached in full at Appendix A
[6] The Joint Advisory Committee (JAC) is a statutory consultee which advises on the acceptability of planning applications within the Area of Outstanding Natural Beauty (AONB)

13. On 14 March, Councillor A contacted the Case Officer dealing with the application for the Council and requested that the application be 'called in'[7] to Planning Committee.

14. The Planning Committee conducted a site visit on 12 April, which was attended by the Principal Planning Officer (PPO), Councillor A, Councillor B and Councillor D. During the visit, Councillor A and Councillor D viewed the site from the main road and from the drive at Purple House. Councillor B and the PPO went onto the site. Councillor B also looked over the wall at the neighbouring properties.

15. The application was considered by the Planning Committee on 17 April. The Planning Officer recommended that the application should be refused as it was a site in open countryside, outside of any development boundaries and it did not meet the requirements of the Council's Unitary Development Plan. The Officer advised that the development was contrary to Policy HSG5 and SPG 10 and that it would have a significant impact on the AONB so would be contrary to Policy.

16. During the Planning Committee meeting, photographs were displayed showing the site's proximity to neighbouring properties and the Committee was shown the site plan. Councillor A provided further information on the proposal and Councillor B reported on the site visit.

17. Councillor A is reported to have "urged" the committee to grant permission for the application, as the site had been chosen to prevent the removal of trees near the road. He also said that the property, when built, would not be sold, as it was for family use. He said the developer would accept a condition that no more dwellings would be built on the site.

18. Councillor A said that there were six dwellings in the vicinity so it should be seen as an "infill" plot, complying with policy.

19. Councillor B said that this was not a "textbook" infill plot, but he felt it could be approved. He said the site was "in a dip" and the proposed dwelling

[7] A Councillor may request that an application be considered by the Planning Committee, following the completion of the Case Officer's report, instead of being determined by a Planning Officer using delegated powers. Each Council has a scheme of delegation which determines which applications should be 'called in'. For a Councillor to 'Call in' an application, he must provide material planning reasons for the request.

would not be visible from the AONB. He also said he felt this plot should be in the local development plan.

20. Councillor A proposed that permission be granted; this was seconded by Councillor C. The Planning Committee resolved to grant the application. The reason stated in the minutes is that "the Planning Committee was of the opinion that this proposal fulfilled the spirit of policy HSG5".

21. Mrs E complained to the Council on 1 April 2014. In its response to Mrs E's complaint, dated 8 April, the Council said that the Committee had clearly assessed the proposal and the location and felt that a suitably designed dwelling could be accommodated. It also said that further consideration to impact and the surroundings would be given at the full permission stage of the process. The Council said that the Committee did not feel it necessary to provide substantial reasons for the decision and that the policy and guidance were open to interpretation.

Denbighshire County Council's evidence

22. I interviewed the Council's Principal Planning Officer ("PPO") and the Development Manager ("DM") and sought comments from the Case Officer ("CO") responsible for the Planning Officer's Report to the Planning Committee. I also interviewed three members of the Planning Committee and sought the views of all of the remaining members of the Planning Committee.

23. The PPO said that the Council would accept a "call in" request by telephone, but would expect it to be followed up in writing. The PPO said that the reason for "calling in" planning application A1 was not recorded, but the reason for the site visit, to assess the proposed development site and the impact of the development, was recorded.

24. The PPO said that, in his view, the Planning Officer's report was clear in policy terms; the site did not meet the requirements of HSG5, the plot was not in a gap in a continuous property frontage and, even if it had been, the gap could not be described as small, so it was not an infill site.

25. The PPO said that the site is visible from the AONB and is very close to neighbouring properties and all this information was set out in the CO's

report. He said that, at the site visit, he answered questions when they were asked, but did not impose his view (or that of the CO) on the members.

26. The DM said that the Planning Officer had given a strong recommendation in terms of policy, but it is open to the Planning Committee to take an opposing view. He also said that there had been a number of Planning Inspectorate appeal decisions relating to infill land which may have caused the Planning Committee members confusion about interpretation of policy.

27. The CO said he was aware of the two previous applications at the site but, given the age of the applications (which predated the adoption of the UDP), there was no need to make reference to them. He said that it might, on reflection, have been useful to include them but, as both applications had been refused and the recommendation had been to refuse planning application A1, he did not consider their absence from the report had any impact.

28. In respect of the dimensions of the proposed dwelling, the CO's view was that, given the close proximity of the footprint to the adjacent dwellings, a new building of any scale would have been unacceptable. He also said that the main issue was whether the site could be considered to be part of a group of dwellings, as required at the time by the adopted UDP policy, which in his view, it could not.

29. Although the scale of the proposed dwelling was not included in the application, the Council said that some information regarding scale was provided in the application. The plan showed a possible siting of the dwelling with a proposed footprint of 13m x 10m. The Council says that scale is also indicated by the applicant's agent in the design and access statement. He said "even a two storey dwelling could have an orientation which would not create any overlooking or loss of privacy".

30. The minutes of the committee meeting show that there was discussion about wording of the Unitary Plan Policy relating to infill development. Members were aware of the plot being located in the AONB and noted the respective location of adjoining properties. They were also advised of the representations which included effect on the landscape as well as privacy and amenity.

31. Given the passage of time since the events, interviews with the Councillors did not provide a clear and consistent picture of the reasoning for the decision, although a number of Councillors said scale could be considered at the reserved matters application.

32. On receipt of the draft report the Council made the following comments;

Complaint 1 - The Council said that, as the minutes do not indicate departure from policy, the only conclusion must be that the Members considered the scheme to be compliant. If Members alleged erroneous interpretation led them to conclude that the Scheme complied with policy, then there would be no requirement for them to give reasons for departing from it. The Council said that the policy is deliberately worded in a way that allows interpretation depending on the circumstances of each case and the site in question could reasonably be interpreted as being within a group of dwellings, as set out in the policy.

33. Complaint 3 – The Council is of the view that it is unjustified to find that it failed to fully consider the scale of the development and the impact on neighbouring properties. Article 3(4) Town and Country Planning (Development Management) Order (Wales) 2012 ("Article 3") provides that "*where scale is a reserved matter, the application for outline planning permission must state the upper and lower limit for the height, width and length of each building included in the development proposed.*" The Council said, in this case, Members were presented with the proposed width and length of the house and the Design and Access Statement ("DAS") contained a reference to the potential impact of a two storey dwelling, which the Council says can reasonably be interpreted as the "upper limit" required by Article 3. The Council also said that Members conducted a site visit.

34. Complaint 4 – The Council said that there is sufficient detail in the minutes of the meeting to discern the reasoning of Members and their view that the scheme was compliant with policy. If Members were of the view that the scheme complied with the development plan, it would be illogical to require reasons for departing from it. The Council also said there is no legal

requirement in Wales for a planning authority to give reasons for granting planning permission.

35. Complaint 5 – The Council disagreed that the planning decision had not been made in accordance with policy. It said the Decision Notice does not say that the decision was made in compliance with those policies, it merely contains the heading "Planning Policies Relevant To The Decision".

The Council said that providing the planning history of this site would probably cause more confusion given the age of the previous decisions and the different policy context within which they were decided.

36. Complaint 6 – The Council said it disagreed that members had regard to immaterial considerations. The Council's view is that this represents the sort of forensic analysis that has been deprecated by the Courts and Members should be free to discuss a planning application without fear that their contributions will be scrutinised with a fine-tooth comb at some later date. The Council said that such a discussion does not mean that Members took account of immaterial considerations, merely that they were aware of the circumstances which led to the application being made. It said the Members' collective determination is to be found at the end of the Minutes when it is recorded that they had found compliance with the spirit of policy HSG5.

37. The Council said it considered it potentially justifiable that members may have misinterpreted the policy. The Council is of the view it has an arguable case that the interpretation was within scope of the policy, but said that it is also arguable that the interpretation may have stretched the policy too far.

38. The Council said the permission granted was for outline consent. The determination of reserved matters provides the Council with the ability to mitigate any impact caused to the complainant.

Professional Advice

39. The full advice can be found at Appendix A, but I have summarised it as follows;

40. Submission and Validation – Some information on the potential scale of the building has been included. There is a plan which shows the possible site of the proposed building with a footprint of 13m x 10m. There is no information on the upper and lower limits of the height of the proposed structure.

41. Consideration of the application – The CO set out in the Planning Officer's report that refusal of the application was due to conflict with three policies of the Council's Unitary Development Plan (UDP), the most significant is HSG 5 which relates to infill development within small groups of houses in the open countryside.

42. The Adviser said that there is case law that rejects the proposition that each planning authority was entitled to determine the meaning of development plans from time to time as it pleased, within the limits of rationality. Development plans should be interpreted objectively, in accordance with the language used, read in its proper context. They are intended to guide the decisions of planning authorities who should only depart from them for good reasons. The Adviser is satisfied that, interpreted objectively, the proposal is clearly contrary to policy HSG5.

43. Impact on residential Amenity and the AONB – The Adviser said that although members may have viewed the site and considered its relative position, without details of the minimum and maximum heights of the proposed dwelling, an adequate assessment of impact is not feasible.

44. The adviser also said that impacts arising from the precise siting, dimensions and detailed design would be assessed at the reserved matters stage. These cannot extend to assessment of the acceptability of the development in principle.

45. On receipt of the Council's comments I sought further advice from the Ombudsman's Planning Adviser and I have summarised his advice as follows;

46. The Adviser did not consider there was any good reason set out by the Council to consider amending the advice he has already given regarding interpretation of policy, in his original advice. This is a restrictive, rather than a permissive, policy with the intent of providing strictly controlled opportunities in rural areas and only where all tests of the policy are satisfied.

47. The Council has failed to ensure that the requirements of Article 3 were complied with. The information about scale contained within the DAS was not an adequate substitute for the requirements of the order. Without the details required by the Order, an adequate assessment of the impact of the proposal, as required at outline stage, is not feasible. The consideration at the reserved matters stage cannot extend to the principle of development which is determined at the outline stage. Without the appropriate information about the scale of the proposal the judgement of the members, about the acceptability of the impact of the development, was compromised.

48. The Adviser refers to a letter issued in May 2015 (Appendix 2) by the Planning Inspectorate which raises concerns about instances of appeals where applications do not include the Article 3 information and says that an application should not be registered as valid if the details required under Article 3 are not provided. From 1 September 2015, the Inspectorate will not accept an appeal where an application does not include this information. This underlines the necessity of compliance with the Article 3 requirements.

Analysis

49. Submission and Validation – Article 3 states that, where scale is a reserved matter, the outline application must state the upper and lower limit for the height, width and length of each building included in the development proposed. In April 2012, Circular 002/12 was issued by the Welsh Government[8]. Paragraph 14 states "information required to make a valid application will depend on the type of consent applied for. For the applications to be registered as 'valid', applicants must provide all the information required on the Standard Application Form, any additional supporting assessments referred to in the form or required by legislation, plans, drawings and certificates".

[8] Welsh Government Circular 002/2 Guidance for Local Planning Authorities on the use of the standard application form (1APP_ and validation of applications.

50. Some information on the potential scale of the building has been included. There is no information on the upper and lower limits of the height of the proposed structure as required by Article 3. The Council has said that the Design and Access Statement states "even a two storey dwelling could have an orientation which would not create any overlooking or loss of privacy" which the Council consider is information relevant to scale. This is not an adequate substitute for the requirement of the Article 3, neither am I satisfied that it adequately conveys that the intention is to build a two storey property.

51. Processing and reporting – Following validation the file was passed to the CO. Article 3 includes a power to require further details in respect of any of the reserved matters to allow full consideration of the application. In this case the CO has indicated that, given the close proximity of the footprint to the adjacent dwellings, a new building of any scale would have been unacceptable. This may have been his view, but COs must be mindful that they may not be the decision maker in each case and a further opportunity to ensure the application contained the minimum information required by Article 3 was lost.

52. This site history included two previous applications in 1990 and 1992 for a single dwelling. These applications were refused for reasons relating to conflict with policies in a previous development plan (the Rhuddlan Borough Local Plan) relating to housing in the countryside and impacts on a special landscape area and the AONB. The CO advised he was aware of the two previous applications, but as they were outdated he did not make reference to them, although he has since commented that, on reflection, it might have been useful to include them.

53. The report advises that the site has been subject to a number of previous applications for alterations to the main house and outbuildings, but there have not been any previous proposals for the erection of a new dwelling. This is simply not the case and is misleading.

54. Committee and Site Visit Referrals – The application was referred for consideration by committee at the request of a Councillor. No written request detailing the reasons for the request was provided as required by the Council's delegation scheme. The Council's protocol for site inspections requires a request to be made by a Member to the Development Control Manager (by email or letter) including clear planning grounds. The only

documentation available regarding a site visit is an e-mail to the Support Team Leader which indicates that a Member would like to be kept updated and "if it goes to committee a site visit on the above application please". No clear reason or planning grounds are recorded and I am not satisfied that the site inspection protocol was properly followed.

55. Consideration of the application – The site panel viewed the site from the adjacent highway and the existing access drive; it was not viewed from the adjacent dwellings, from the lane below the site which serves the adjacent dwellings or from any other wider public vantage points. One member went on to the site and viewed the adjacent dwellings over the rear fence.

56. The application was considered and determined at Planning Committee on 17 April 2013. The minute of the meeting records contributions and views of Councillors and concludes that the decision was to grant planning permission, contrary to the Officer's recommendation, for the reason that the proposal fulfilled "the spirit" of policy HSG5.

57. Welsh Government set out in Planning Policy Wales[9] (PPW) following statement:

> "The local planning authority should have good reasons if it approves a development which is a departure from the approved or adopted development plan, or is contrary to the Welsh Government's stated planning policies, the advice of a statutory consultee or the written advice of its officers, and those reasons should be recorded in the Committee's minutes".

58. In this case the CO set out in his report that refusal of the application was due to conflict with three policies of the Council's Unitary Development Plan (UDP), the most significant being HSG 5 which relates to infill development within small groups of houses in the open countryside. The officer's report assesses the policy position in depth and concludes very clearly and strongly that the proposal does not comply with the terms of this policy.

[9] Paragraph 3.1.5 of Planning Policy Wales

59. Phrases used in the minutes – 'fulfilled the spirit of', 'Not textbook' and 'broadly in compliance with' – imply that the proposal does not actually comply with the policy. What is not clear from the minute is what view was finally taken by the members when making their decision about the policy position and their interpretation and application of policy (not only HSG5 but also the other policies referred to in the recommendation).

60. The Council has said that Members are entitled to take a contrary view to officers on the interpretation of policy or guidance. However, Development plans should be interpreted objectively, in accordance with the language used and read in its proper context. The Ombudsman's Adviser is satisfied that, interpreted objectively, the proposal is clearly contrary to policy HSG5.

61. Impact on residential Amenity and the AONB – Members may have viewed the site and considered its relative position during a site visit, but without details of the minimum and maximum heights of the proposed dwelling an adequate assessment of impact is not feasible and their judgement was compromised.

62. The AONB Joint Advisory Committee (JAC) objected to the proposal on the basis that it would be seen from a number of vantage points, that it would result in the further loss of the rural character and appearance of the locality and that there were no special circumstances to justify an exception to policy. The JAC also had concerns about the precedent which permission would set and also about the potential loss of trees. There is no information in the minute of the meeting to suggest that the issues of concern about the harmful impact on the AONB made by the JAC had been considered.

63. Members were not aware of two previous refusals at the same location where the reasons for refusal included harmful impact on the AONB, in fact they were advised that there were no previous applications for a dwelling on the site. Even though the policies in force at the time of these decisions related to an earlier development plan, the policy context to protect the landscape were comparable. In exercising their judgement about the impact on the AONB, Members did not consider the previous decisions and did not, therefore, take a view on how closely related they were and to what extent they were material. This could have had an impact on the decision.

64. The development in principle is set out at the outline stage of the application and cannot be re-assessed at the reserved matters stage, which is when precise details are considered within the limits set out in the outline permission.

65. Decision – There is no legislative requirement for a Council to provide reasons for a decision to grant permission. However, the policy statement in paragraph 3.1.5 of PPW says that the Committee must give good reasons for approving a development contrary to the advice of its officers and these should be recorded in the Committee minutes. The minute of the decision records the reason for the decision as being that "the planning committee was of the opinion that this proposal fulfilled the spirit of policy HSG5". This is inadequate, vague and ambiguous and could not reasonably be described as a good reason as expected by PPW.

Conclusions

Complaint 1

66. Mrs E complained that the Planning Committee failed to properly interpret and apply relevant legislation, policy and guidance. Having considered all of the information available to me, I **uphold** this element of the complaint.

67. The Council and some of the Councillors interviewed have indicated a view that the Planning Committee can make an alternative interpretation of policies and can interpret them as they see fit. As the Adviser has stated, the Planning Committee must interpret policy objectively, in accordance with the language used and read in its proper context. The Planning Adviser has explained in full in his report why he considers that the Planning Committee did not interpret the policies properly, nor consider these policies in their proper context.

68. The Council also failed to advise the Planning Committee of two previous refusals of development on the site. This meant that, when the case was put in front of the Planning Committee, it was not aware of the two previous refusals. As the Adviser has stated in his report, the site's planning history may be a material consideration and as there were two previous refusals for the erection of a dwelling on the same site, the committee ought to have been made aware of their existence so that they may determine

whether they are relevant. The report therefore fails to provide accurate and relevant information for the decision makers.

69. To say that there was no relevant planning history is misleading. The Council has subsequently argued that to provide this information would have caused confusion given the age of the refusals and their reference to outdated policies utilised by the council which was in existence at the time. The reasons for refusal of the previous applications related to housing in the countryside and impact on a special landscape area and AONB. Whilst the development plan referred to has since been replaced, this site remains in the countryside and in a special landscape area and AONB. I am not persuaded that to provide this information would have caused confusion as it would have been open to the Planning Officer to advise on the significance of any planning history.

70. The Committee said that it granted the permission contrary to the Officer's recommendations because it was of the opinion that this proposal 'fulfilled the spirit of the policy'. No further explanation is given in the minutes other than this application is not a 'textbook' infill plot.

71. The Council's position that the only conclusion that can be drawn from the minutes of the meeting is that the members considered the scheme to be compliant with their interpretation of 'infill development' is not consistent with the minute of the meeting. If the Committee considered the proposal was compliant with the policy then it would have been a straightforward matter to say so.

72. The application has been considered by planning officers at the Council and by the Ombudsman's Planning Adviser, all are of the view that the plot does not meet the requirements of the policy. I too have considered it and it is clear to me that the plot does not meet the requirements of the policy. The comments of the committee, in the minutes of the meeting and the reason given for granting the application, that it is 'in the spirit' of the policy, does not show proper interpretation of the policy.

73. Further to this, the Planning Officer indicated other policies to which the application was contrary. If the Committee believes that there are good planning reasons for granting an application which is contrary to policy, it may do so; it may also go against the advice in the Planning Officer's report.

However, no comment is made in the minutes of the impact of the development on the neighbouring properties or on the AONB and the Planning Officer's report stated that the development was also contrary to policy in these areas. Therefore, the Committee has not given good reason why the application should be granted contrary to Officer advice.

Complaint 2

74. Mrs E also complained that the Council admitted that the development did not comply with policy, but chose to ignore it. Having considered all of the information available to me, I do **not uphold** this element of the complaint.

75. The Council has clearly stated in its report that its Officers were of the view that the development did not comply with policy HSG5 and that it would have an adverse effect on the AONB and the amenity and privacy of neighbouring properties. However, it is the committee which is to make the final determination of the application and the committee is entitled to make a decision which is contrary to Officer recommendation.

76. Council Officers may disagree with the merits of a decision of the committee; it is not within the power of the Officers to overrule the decision. Their role is to advise. A Council does have the power to revoke the grant of planning permission. That said, it is a power that is used only rarely and the Council advised the complainant it did not agree that it was appropriate to do so in this case. Therefore, I do not agree that the Council ignored the information provided by the complainant.

Complaint 3

77. Mrs E complained that the Council had failed to fully consider the scale of the development and the impact it would have on the neighbouring properties. Having considered all of the information available to me, I **uphold** this element of the complaint.

78. As already set out, where scale is a reserved matter, as it was in this case, the application must state the upper and lower limit for the height, width and length of each building in the development proposed. In this case the Council failed to ensure that this information was provided at the validation stage. This means that the minimum information required to allow

the assessment of the impact of the proposed development on the AONB and the neighbouring properties was not provided to the Planning Committee.

79. The Council failed to ensure that the requirement, of Article 3 of the Town and Country Planning (Development Management Procedure)(Wales) Order 2012 that requires that the scale MUST be provided, was met. It is the responsibility of the local authority not to validate an application unless this requirement is met. In this case it has not been provided and therefore this application should not have been considered a valid application.

80. Whilst it is true to say that impact would again be considered, when the precise details are revealed at the reserved matters application stage, the scale of a proposed dwelling must be provided at the outline application stage (where scale is a reserved matter) to allow the decision makers to assess the impact on residential amenity of neighbouring properties and ensure compliance with policy ENV 2 (which considers the impact on the AONB).

81. The Council has stated in its response to the draft report that scale is indicated by the applicant's agent in the design and access statement; he said "even a two storey dwelling could have an orientation which would not create any overlooking or loss of privacy". I do not agree that the statement confirms that the proposed building is intended to be two stories high. In any event, such a statement is not an adequate substitute for the requirements of the order.

82. Given the passage of time since the events, interviews with the Councillors did not provide a clear and consistent picture of the reasoning for the decision. This highlights the importance of a clear and full meeting minute. A number of Councillors commented that scale would be considered at the reserved matters application and I was not satisfied that the scale of the proposed building had been fully and properly considered. A site visit was conducted. However, only one member of the Committee was able to go onto the site and the other members viewed the site only from limited vantage points.

83. The Planning Committee may exercise judgement when determining whether the impact of a proposal is acceptable. In this case the failure to provide details of the minimum and maximum height of the development

means that the Committee did not have enough information to properly exercise judgement of the impact of this proposal. Therefore, their consideration of the proposal was compromised. This amounts to maladministration.

84. The Planning Inspectorate wrote to all Local Authorities in May 2015 indicating its concern that appeals were being made on planning applications which did not contain the necessary information required by Article 3 and should not have been registered as valid application.

Complaint 4

85. Mrs E complained that the Planning Committee failed to provide any substantial reason why the appropriate planning policies and guidance notes had not been adhered to. Having considered all of the information available to me, I **uphold** this element of the complaint.

86. According to guidance, determination of an application must be made in accordance with the development plan, unless material considerations indicate otherwise. The local planning authority should have good reasons for approving a development which is a departure from the plan. It is unclear from the reasons provided by the Planning Committee whether it was of the view that the development was or was not in accordance with Policy HSG 5, although, if we are to determine it was of the view that it was, I have already set out the view that the policy could not have been properly interpreted. The minutes make no mention of the reasons for disagreeing with the Officer's view that the application was contrary to policy ENV2.

87. The Council's response to the draft report is silent on Welsh Government's policy statement in paragraph 3.1.5 of Planning Policy Wales. The Welsh Government's policy is clear and, given that the Committee reached a decision contrary to the written advice of its officers, the policy is that the planning authority should have good reasons and these should be recorded in the Committee's minutes.

88. Whilst it is not a legal requirement to give reasons for granting planning permission, it is my view that the failure to give adequate reasons for voting, contrary to officer advice, is non-compliance with paragraph 3.1.5 of Planning Policy Wales and is maladministration.

Complaint 5

89. Mrs E complained that the statement that the planning decision had been made in accordance with Policy HSG5, Policy ENV2 and SPG 10 is false. Having considered all of the information available to me, I **uphold** this element of the complaint.

90. In its response to the draft report the Council said that reference is made to the policies in the decision notice because they are relevant to the application and it is not intended to show compliance with those policies.

91. I would agree that the Council has not specifically stated in the decision notice that the decision was made in accordance with the policies referenced therein; that said, it is reasonable for the complainant to understand from the decision notice that the Council has granted the permission in accordance with the policies, guidance and legislation referred to, in the absence of clear reasons given for departing from Officer advice that the application was not in compliance with those policies.

92. The Adviser has already set out the specific requirements of HSG5 and SPG10 and says in this case the site does not meet the requirements of the policy. If the contention is that the policy has been applied, it cannot have been properly interpreted.

93. As the policy relates to the subjective view of the person considering the effect of the impact the development will have on the AONB, it can be subject to differences of opinion; this does not mean that it has been interpreted incorrectly. That said, it is known that the planning application did not include detail of the scale of the development. Therefore, the policy could not have been applied properly, as it is not possible to assess the impact of a building when its scale is not known.

94. Further to this, the Planning Committee were not made aware of previous refusals for applications of similar developments, so did not have the opportunity to take these into account.

Complaint 6

95. Mrs E complained that Councillor A incorrectly interpreted policy and influenced the other Councillors by making reference to non-material planning considerations. This complaint is **partially upheld**.

96. Councillor A called in the application and was quoted at the Committee Meeting as providing information which was not available on the application form. No reason was recorded for the call in request made by Councillor A and I am not satisfied that the delegation scheme requirements were fully followed in this regard. An interview with Councillor A did not provide clear planning reasons for calling in this application.

97. I have already set out the reasons why I am of the view that the Committee did not interpret the policy correctly. An interview with Councillor A did not provide any additional clarification on the interpretation of policy HSG5.

98. Councillor A advised the Committee that the applicants had chosen this plot, contrary to the alternative plot at the front of the land which would involve the removal of trees, so this plot was a better alternative. He also said that the property would be for family members and would not be sold. This information, which does not give rise to material planning considerations, was not included on the application forms and was provided to Councillor A at an unminuted meeting with the Architect to the development and a constituent.

99. However, it is not possible to determine with any certainty to what extent the information provided by Councillor A influenced other members of the Committee.

100. In its comments on the draft report the Council has set out its concern that the discussion has been subject to 'forensic analysis', which has led to a conclusion that members had regard to immaterial considerations. It appears that the Council has misunderstood the findings set out above.

101. The complaint is that Councillor A incorrectly interpreted policy and influenced other members. I have partially upheld the complaint as I have already provided detailed reasoning relating to the incorrect interpretation of

policy, a decision to which Councillor A was a party. I did not find that the information which did not give rise to material planning considerations, provided by Councillor A influenced the other members.

Recommendations

102. I recommend that within one month of this report being issued:

a) the Council ensures that its validation process is updated to ensure that it takes into account the statutory requirements set out in article 3 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

b) The Council shares this report with the planning committee and arranges additional training for the Planning Committee which encompasses the failings identified in this report.

c) The Council ensures that it accurately records reasons given for decisions taken which are contrary to Officer advice.

d) based upon the findings in this report, the Council considers whether it is appropriate to revoke the permission it has granted.

e) I recommend that, if following on from d), the Council ultimately determined not to revoke then, within one month of the completion of the development, the Council instruct the District Valuer to assess the impact of the development on Mrs E's properties and pay her an amount which equates to the difference in value before and after the development.

103. I am pleased to note that, in commenting on the draft of this report, Denbighshire County Council has agreed to implement the recommendations.

Sinead Cook

Investigation Officer 15 September 2015

Appendix 1

Advice for the Public Services Ombudsman for Wales
Complaint re planning permission for development at Purple House,
Complaint Ref: 201400990

The Ombudsman has requested my advice in relation to this complaint arising from the Council's grant of planning permission for development at Purple House, Denbighshire.

I gave initial views in June 2014 based on the documents then provided with the files and further advice in August 2014 following receipt of further information from the Council.

Subsequently, interviews were held at the Denbighshire County Council offices and further information supplied following these interviews.

In the light of all the information then available I reviewed and updated my previous advice and submitted this in December 2014.

In the light of further advice received I have now reviewed my advice and, as amended, this is set out below.

Advice:

1. The planning application subject of this complaint (42/2012/1638/PO) is for outline planning permission for erection of one dwelling on land forming part of the garden of Purple House, Denbighshire.

2. The complaint, in summary, is that the Council did not properly consider whether the proposal met its own policies on development in the open countryside (mentioning HSG5 and ENV5 in particular – but mostly concerned with HSG5) and that as a consequence the adjacent properties would suffer loss of amenity to an unacceptable level.

Submission and Validation:

3. The application was originally received on 27 December 2012 and the validation check on 28 December 2012 identified a number of deficiencies with the submission. Additional information was requested by letter dated 2 January 2013 and a revised application, including the correct application form for an outline application, was received on 29 January 2013.

4. This revised form indicates (by means of the tick boxes in question 3) that access is the only reserved matter for which approval is sought in the outline application – approval is not indicated as being sought at outline stage for the other reserved matters of appearance, landscaping, layout and scale.

5. The statutory requirements relating to outline applications are set out in article 3 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. Where scale is a reserved matter, article 3 (4) states that the outline application must state the upper and lower limit for the height, width and length of each building included in the development proposed.

6. The Council, in the information supplied, state that there are no questions on the National Planning Application Forms on the Planning Portal setting out a requirement for this information to be supplied. In my view, this is beside the point, which is that the statutory Order sets out the requirement that where scale is a reserved matter the application must (my underlining) state the upper and lower limit for the height, width and length of each building included in the development proposed.

7. It would be surprising, I think, if the absence of a question on a national planning application form was held to over-ride a statutory requirement. It is the responsibility of the local planning authority to check that a submission meets the statutory requirements and that is, in part, the purpose of the validation process.

8. The Welsh Government published, in April 2012, Circular 002/12 to provide Guidance to Local authorities on the use of the Standard Application Form ('1APP') and Validation of Applications.

9. Para 14 of the Guide states that "the information required to make a valid application will depend on the type of consent applied for. For the applications to be registered as 'valid', applicants must provide all the information required on the Standard Application Form, any additional supporting assessments referred to in the form or required by legislation, plans, drawings and certificates."

10. It is clear that the requirements of the Order (abbreviated as DMPWO) are included. For example, para 31 states "If an application has been found to be invalid because the local planning authority considers

information required by the DMPWO or their local validation requirements have not been provided, there is no right of appeal to the Welsh Ministers."

11. This is also set out clearly in List 2 at the end of the Guide, where at the end of item 2 of this list, is included the relevant requirements of article 3(4) of the Order.

12. It is clear, therefore, that the Authority cannot escape the need to ensure that the DMPWO requirements are complied with and these should be identified as part of the validation process. **In this case, the Council have failed to ensure that the information about the upper and lower limit for the height, width and length of each building included in the development proposed was provided.**

13. The Council, in the information supplied, nevertheless point out that the application included some information:

14. Firstly that a plan showed a possible siting of the proposed building (which scales as 13m x 10m) which the Council say gives information about the basic dimensions. I would accept that this could be taken as indicative of the width and length, although it does not specify upper and lower limits as required by the Order. The indicative footprint dimensions were included in the Committee report.

15. Secondly, the Council point out that the Design and Access Statement states "even a two storey dwelling could have an orientation which would not create any overlooking or loss of privacy" which the Council consider is information relevant to scale. However, this is rather oblique and imprecise and I do not think this is an adequate substitute for the more precise requirement of the Order to state upper and lower limits for the height of the building.

16. **My conclusion is that the Council's validation process failed to ensure that the statutory requirement of the DMPWO relating to the scale of the development was provided and the application should not have been accepted as valid.**

17. The significance of this failure is that this minimum level of information should have been available at this outline stage to provide the basis of the assessment of the impact of the proposed development on interests of

acknowledged importance – in this case, the AONB and the neighbouring properties.

Processing and Reporting:

18. Following validation, the application was passed to a case officer (in this case, a consultant acting for the Council) for processing, assessment and report preparation. I make some further comment below concerning the scale of the proposed dwelling and on previous planning applications which run through to the report and the consideration of the proposal by Committee. Both these issues have also been further explored in the interviews with Councillors and officers and subsequent correspondence and I also comment on the information obtained from these.

19. The DMPWO, in addition to the requirements of article 3 referred to earlier, also includes, in article 3 (2), a power to require further details in respect of any of the reserved matters in order to consider the application. This is a judgment generally made by the case officer. In response to your request for information, the case officer advised that in respect of the dimensions of the proposed dwelling his view was that, given the close proximity of the footprint to the adjacent dwellings, a new building of any scale would have been unacceptable. While understandable, this further opportunity to ensure that the application contained at least the minimum information required by the DMPWO was lost.

20. The documentation provided to the case officer included a computer printout which included the history of previous applications on land at Purple House. This site history included two previous applications in 1990 and 1992 for a single dwelling on land which included part of the site of this present application subject of the complaint. These applications were both refused for reasons relating to conflict with policies in a previous development plan (the Rhuddlan Borough Local Plan) relating to housing in the countryside and impacts on a special landscape area and the AONB.

21. In response to your request for information, the case officer advised that he was aware of the two previous applications but as they were somewhat dated and before the adoption of the UDP he did not make reference to them. He also commented that it might on reflection have been useful to include them but as both applications were refused and his recommendation as case officer was to refuse he did not consider that the

absence of these two applications in the report had any bearing on his view on the scheme. I comment further on this in para 22 below.

22. The case officer's report covers all the subject areas I would expect a Committee report to cover and in a reasonable and suitable amount of detail. **However, in respect of the site history, the report advises that** the site has been subject to a number of previous applications for alterations to the main house and outbuildings, but **there have not been any previous proposals for the erection of a new dwelling. This is plainly incorrect and the interviews with the members confirmed that they were unaware of these previous refusals.**

23. I am aware that it has been held[5] that part of a planning officer's expert function in reporting to a committee must be to make an assessment of how much information needs to be included in order to avoid burdening a busy committee with excessive and unnecessary detail. However, **I do think that the existence of two previous refusals for the erection of a dwelling house is information which the members should have been made aware of and, in that respect, I think the report therefore fails to provide accurate and relevant information for the decision makers.** It is, of course, for the decision makers to determine the relevance and materiality of these previous decisions but if they are not aware of them and furthermore have been informed that none exist they cannot do that. I comment further on the implications of this in the consideration of the application and decision making later.

24. The report identifies the main planning considerations as the principle of development, the impact on the AONB, residential amenity and highways impact. Each of these considerations is assessed in further detail and it is concluded that the proposal should be refused as the site lies in the open countryside, on a plot which is not an infill plot, and does not lie within a group of six dwellings, the new dwelling would be harmful to the AONB and would adversely affect the amenity and privacy of the adjacent occupiers. As regards to the highways impact, it is concluded, bearing in mind that there was no objection from the Highways Officer, that a highway reason for refusal cannot be justified. I examine the Committee's consideration of the planning issues forming the basis of the recommendation for refusal further in the later sections (para 37 onwards).

Committee and Site Visit Referrals

25. The report on the application states that it was referred for consideration by Committee at the request of a Councillor. The Council has supplied a copy of their scheme of Delegation which shows that applications which need to be reported to Planning Committee include (para 2.2.4) those where the Ward Member has submitted a written request based on valid planning grounds. The Council do not have any copy of a written request, only a note on file that a telephone request was received from the Local Member but no reasons are noted. It is noted that the request would be put in writing but the Council state there is no email or letter on file.

26. The interviews also confirmed that no written request was made. The explanation provided was that it was normal practice to handle requests from this particular member by phone as the member was not a proficient IT user. However, **no reason is recorded for the request and there has been a failure to follow the delegation scheme requirements.**

27. A site inspection panel was held on 12 April 2013. A copy of the Council's protocol for site inspection panels has been provided and Part D contains the procedure to be followed. The first requirement is for a request to be made by email or letter from a Member to the Development Control Manager and the second requirement is that the request is to include clear planning grounds. The Development Control Manager is then required to consult with the Chair of Planning Committee before deciding whether a pre-committee site visit is necessary.

28. The documentation available includes an email from the Team Leader (Support) which records that the Local Member would like to be kept updated "and if it goes to committee a site visit on the above application please". However, no reason or clear planning grounds are recorded. From the interviews, the officer responsible for site visits confirmed that there was consideration of the necessity for the site meeting beforehand. The minute of the site inspection Panel meeting records that this was requested to allow assessment of the nature of the development in the vicinity of the site to address the planning policy issues relating to infill development. This would, in my opinion, be an appropriate reason for requesting a site visit.

29. **However, the available documentation does not show full compliance with the requirements of the Protocol to make the request by email or letter or provide clear planning grounds and,**

following the interviews, it remains unclear whether the protocol was followed properly.

Consideration of the Application

30. The consideration of the application took place in two stages – the site visit (on 12/04/13) and the Planning Committee meeting (on 17/04/13). The site visit, in accordance with the Council's protocol, did not involve the whole of the Planning Committee but only the Chair and Vice Chair of Committee, the local member and a representative from the Community Council. From the site panel notes and the interviews it seems that the site panel viewed the site from the adjacent highway and from the existing access drive into Purple House. One of the members also walked down from the drive onto the site and viewed the adjacent dwellings over the rear fence. The panel did not view the site from the adjacent dwellings or the lane below the site which serves the adjacent dwellings and did not view the site from any other wider public vantage points.

31. The note of the site panel meeting indicates the issues that were raised and the letter from the Council's Development Manager also gives a view on aspects of interpretation and matters considered. The Council have drawn attention to the note of the site meeting where it refers to "the detailing of the proposed development". However, I am not aware of any other information about the details of the proposed dwelling as regards appearance or scale other than the information submitted with the application and referred to in the Council's response.

32. The application was considered and determined at Planning Committee on 17 April 2013 and the detailed officer report was submitted as well as the note of the site panel meeting. Photographs (2 of the site and 2 taken from the access to the adjacent cottages) were displayed to the Committee.

33. The minute of the Committee meeting records contributions from and views of Councillors. The decision was to grant planning permission (subject to conditions to be agreed) contrary to the officer's recommendation for the reason that the proposal fulfilled the spirit of policy HSG 5. The planning conditions were approved on 15 May 2013 as recommended in a report by the Head of Planning and Public Protection.

34. In the following sections, I comment in further detail on the consideration and determination of the application with respect to the planning authority's s38(6) duty, particularly the interpretation of policy, and also, given that the decision was contrary to officer recommendation, to the reasons for the decision.

35. The statutory basis of decision making is set out in s38(6) of the Act[1] which states "if regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the Plan unless material considerations indicate otherwise". Thus, the question of whether a proposal complies with or conflicts with the Development Plan (where the plan is relevant, which it is in this case) is of fundamental importance to decision making.

36. The Welsh Government's policy set out in Planning Policy Wales (para 3.1.5) includes the following statement with regard to reasons:

> *The local planning authority should have good reasons if it approves a development which is a departure from the approved or adopted development plan, or is contrary to the Welsh Government's stated planning policies, the advice of a statutory consultee or the written advice of its officers, and those reasons should be recorded in the Committee's minutes.*

Infill Development – Consideration and Interpretation of Policy:

37. In this particular case, the planning officer's reasons for recommending refusal of the application referred to conflict with three policies of the Council's Unitary Development Plan. The most significant of these is policy HSG5 which relates to infill development within small groups of houses in the open countryside and which was applicable to the site and location of this proposed development. This states that:

IN THE OPEN COUNTRSIDE OUTSIDE THE DEVELOPMENT BOUNDARIES OF MAIN CENTRES, MAIN VILLAGES AND VILLAGES, INFILL DEVELOPMENT OF ONE OR TWO HOUSING UNIT(S) ONLY MAY BE PERMITTED WITHIN SMALL GROUPS OF HOUSES WHICH COMPRISE A CLEARLY IDENTIFIABLE GROUP PROVIDED THAT THE PROPOSAL:

i. COMPRISES THE INFILLING OF A SMALL GAP BETWEEN BUILDINGS WITHIN A CONTINUOUSLY DEVELOPED FRONTAGE;

ii. DOES NOT RESULT IN RIBBON DEVELOPMENT OR THE PERPETUATION OF EXISTING RIBBON DEVELOPMENT;

iii. IS OF COMPARABLE SCALE AND SIZE TO, AND IS SITED SO AS TO, RESPECT ADJACENT PROPERTIES AND THE LOCALITY.

38. The policy incorporates the concept of 'infill development' which is a long standing and widely used concept in planning with a specific meaning which is consistently followed. The explanatory text to the policy, and the Supplementary Planning Guidance which supports it, make clear that, as used in the Denbighshire UDP, the term has a specific and tightly defined meaning which is consistent with its commonly understood meaning within the planning system. The policy also refers to 'small groups of houses' and the explanatory text to the policy also includes a specific definition which is to be satisfied.

39. Thus, to be considered within the terms of the policy it is necessary for both the tests relating to 'infill development' and 'small groups of houses' to be satisfied as well as the three listed criteria, as is made clear in the text of the UDP and the Supplementary Planning Guidance. Also, as the text of the UDP makes clear, the policy is intended to provide limited and strictly controlled opportunities in rural areas which suggests to me that it is to be applied in a restrictive sense and is only permissive where all the tests of the policy are satisfied.

40. In relation to this case, it seems to me that **the officer's report assesses the policy position in depth and concludes very clearly and strongly that the proposal does not comply with the terms of this policy** – it cannot be classed as an infill plot as it does not infill a small gap and the group of houses is less than that required by the policy - and is therefore contrary to the development plan. It is also clear from the minutes that clear advice was given by officers in respect of this policy.

41. The minute of the site inspection records that there was detailed discussion of the policy wording and advice in the SPG. The definitions of 'groups of houses', 'infill development' and 'infilling' were also considered with respect to the circumstances at the site. The Local Member is recorded as drawing attention to the number of dwellings in the area around the site as an important consideration in the assessment of the application.

42. There are indications from the minute of the Planning Committee that some members recognised that the proposal was not strictly in accordance with policy, e.g. recording a member as "acknowledging that this was not a "textbook" infill plot" and others recorded as it "did not strictly follow policy guidelines". On the other hand, one member is recorded as concluding that "as there are 6 dwellings in the vicinity this should be seen as an infill plot, complying with policy".

43. It seems to me that the latter conclusion is an incorrect interpretation of policy but this is attributed to one member only and taking an overall view of the minute it does not seem that this was necessarily shared by other members who are mentioned. **What is not clear from the minute is what view was finally taken by the members when making their decision about the policy position and their interpretation and application of policy (not only HSG5 but also the other policies referred to in the recommendation).**

44. The uncertainty of the members' reasoning was explored in the interviews and questionnaires. However, no consistent picture emerged. Some members considered the proposal as infilling while one thought it was not a textbook case but close to some of the examples in the SPG.

45. The record of the decision in the minute of Planning Committee states the Committee's opinion that this proposal fulfilled the spirit of policy HSG5. In the later report to the May meeting of Committee which recommended conditions to be attached to the permission the officer's report refers to the discussion and decision in paragraph 2.3 and states the members took the view the proposal was broadly in compliance with the policy.

46. The phrases used – 'fulfilled the spirit of' and 'broadly in compliance with' – seem to me to imply that the proposal does not actually comply with the policy. [However, this simply illustrates one of the problems with the record of the reason for the decision in respect of the interpretation of the policy – one ends up having to make a 'best guess' due to the lack of clarity as to the meaning].

47. In an interview, the Development Manager suggested that the decision was consistent with decisions on planning appeals relating to interpretation and application of policy HSG5. Copies of appeal decisions

were supplied and I have reviewed these and supplied you with a note on my assessment of these decisions in relation to policy HSG5.

48. In six out of the seven decisions, the Council's refusal was upheld. My conclusion is that, from this review of the appeal decisions, and the detail of the reasoning in the seventh in particular, I think it can be concluded that in all cases the Inspectors have strictly followed the wording of policy HSG5 and have not in any of the cases adopted any relaxation of the requirements as set out in the policy and Plan. In the one case (the seventh) where the Inspector perceived an inconsistency between wording of the Plan and SPG he has given precedence to the wording in the Plan and taken account of the intent of the policy which is not unreasonable given the special status of the Plan in decision making accorded by s38(6).

49. Earlier, in the response to the complaint, dated 8 April 2014, the Council's Development Manager enlarges on the consideration of the proposal, including the issue of interpretation of policy, and says that members "interpreted them as they saw fit". The more recent response from the Council's Chief Executive dated 16 July 2014 says that "members are entitled to take a contrary view to officers on the interpretation of policy or guidance..."

50. On this particular point, I am mindful that in a recent legal judgment[2] (referred to as Mevagissey) concerning a decision by Cornwall County Council it was said:

> *The committee cannot have proper regard to relevant policies unless they understand those policies. They therefore have an obligation to proceed on the basis of a proper understanding of relevant policies as properly construed, the true interpretation of such policies being a matter of law for the court. The committee must, in short, ask themselves the right questions, as objectively required by the policy. Where the committee have misunderstood or misapplied a policy, that may found a challenge to his decision, if it is material, i.e. if their decision would or might have been different if they had properly understood and applied the guidance (Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014 at page 1065B, Gransden & Co Ltd v Secretary of State*

for the Environment (1985) 54 P & CR 86 at page 94 per Woolf J, and Tesco Stores Ltd v Dundee City Council [2012] UKSC 13 at [17]-[19] per Lord Reed).

51. In the 2012 Tesco v Dundee judgment[3] listed above, Lord Reed rejected the proposition that each planning authority was entitled to determine the meaning of development plans from time to time as it pleased, within the limits of rationality. He said that development plans should be *"interpreted objectively, in accordance with the language used, read in its proper context".* They are intended to guide the decisions of planning authorities who should only depart from them for good reasons.

52. Consequently, I think these judgments make clear that the courts take the view that planning authority are not completely free to interpret policy 'as they see fit' and that where they take a view on interpretation or application they must nevertheless understand, interpret them and apply them properly as set out in detail in these judgments.

53. **I am, however, quite satisfied in my own mind, that interpreted objectively ,in the way propounded in the judgments referred to above, (paras 50 and 51), the proposal is clearly contrary to policy HSG5**. The gap between buildings is significant and to consider this as a 'small gap' is, in my view, not an objective interpretation of the policy. Added to this, the site is much smaller than the gap and is situated some distance back from the highway and consequently is not infill development. Finally, the separation from Purple House and its neighbour means that the disposition of properties does not meet the definition of a small group of houses as defined in the UDP.

Impact on Residential Amenity

54. On this issue, the case officer's report advises that it is considered that the siting of a dwelling as proposed (although indicative) would cause harm to the privacy and amenity of adjacent occupiers by way of an overbearing impact and overlooking. However, there was, as indicated earlier, no information as to the minimum and maximum height of the proposed dwelling so it is clear that members did not have the minimum information they should have had about the scale of the development to make a decision at outline stage.

55. Those members who attended the site visit will have viewed the site, albeit not from the perspective of the adjacent cottages, and the note of

the site meeting indicates that the indicative position of the proposed dwelling in relation to existing residential properties was pointed out. The Committee were shown photographs of the site from the direction of the adjacent cottages. However, I am of the opinion that without details of the minimum and maximum heights of the proposed dwelling an adequate assessment of the impact of the proposal as required at outline stage is not feasible.

56. At the interviews members indicated that they felt that any issues relating to the impact of the development on adjacent properties, including the height and scale, could be dealt with at reserved matters stage. While it is true that the impacts arising from the precise siting, dimensions and detailed design would be able to be assessed at reserved matters stage, and unacceptable details refused where there are grounds of detail, these cannot extend to assessment of the acceptability of the development in principle as this is to be determined at outline stage with the benefit of the details required by the DMPWO for matters reserved. It is the outline permission which grants the planning permission.

57. I am conscious that considering whether or not the impact of a particular proposal is acceptable involves the exercise of judgement and that decision makers are entitled to exercise judgement providing it is not irrational or perverse. **My reservations about the assessment of the impact of the dwelling in this case stem from the failure to provide details of the minimum and maximum height of the proposed dwelling. It seems to me that as a result the members did not have adequate information about the scale of the proposal and that the exercise of their judgement about the acceptability of the impact of the proposal, appropriate to a decision at outline stage, was compromised.**

Impact on AONB

58. On this issue, the officer's report advises that the site lies within the AONB and reports the detailed views of the AONB Joint Advisory Committee – that the proposal would be seen from a number of vantage points, that it would result in the further loss of the rural character and appearance of the locality and that there were no special circumstances to justify an exception to policy. The JAC also had concerns about the precedent which a permission would set and also about the potential loss of trees - they recommended that the planning authority should consider

making a TPO in this case. The officer's report concluded that the proposal would be harmful to the AONB and contrary to policy.

59. The note of the site visit records that members considered, among other matters, the potential impact on visual amenity and the landscape of the were made aware of the plot being located within the AONB although it would appear from the interviews that members did not visit any wider vantage points. It was also evident from the interviews that little weight was given by the local member to the views of the JAC.

60. It is not clear from the minute of the Committee whether there was any discussion of the impact on the AONB although it is recorded that one Councillor reported on the site visit and stated that the site would not be visible. The interviews indicated that the Members felt that the site was in a dip or bowl and would not be very visible.

61. As before, I am well aware that considering whether or not the impact of a particular proposal is acceptable involves the exercise of judgement and that decision makers are entitled to exercise judgement providing it is not irrational or perverse. In addition, committee members may be expected to have a substantial local knowledge and understanding. Nevertheless. it is clear that Members, both on site or at Committee, were not aware or made aware of the two previous refusals at this location where the reasons for refusal included harmful impacts on the AONB. While the policies in force at the time of these decisions related to an earlier Development Plan, nevertheless, the policy context to protect the landscape were very comparable.

62. I have provided a note on judgments relating to previous decisions. These judgments underline the importance of consistency in decision making and for previous decisions to be taken into account where they are 'alike'. This does not mean that a decision maker is obliged to follow a previous decision which is relevant and material but that before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.

63. **In the present case, the Committee were not aware of the previous refusals and moreover were advised that there were no previous applications for single dwellings. Therefore in exercising their judgement about the impact on the AONB they did not consider the previous decisions and did not, therefore,**

take a view on how closely related they were and whether and to what extent they were material. Had members been aware of the previous refusals then there is a possibility that this might have affected the decision – at the very least, I think that they should have been made aware of them.

Decision

64. While the minute of the Committee records a variety of views that were expressed what is not at all clear is what the members' conclusions were in respect of the policies in question when they made their decision. While the reason recorded relates to one policy, there is no mention of either of the other two policies referred to in the officer's recommendation (although the later report of the officer on conditions refers to consideration of the additional factors of local landscape and residential impacts). Equally, it is not clear from the minute of the decision whether other considerations, which might or might not be material, were influential in the decision.

(i) Planning Policy Wales

65. In relation to the policy statement in para 3.1.5 of PPW, it is necessary then to ask if the Council had good reasons for approving a development contrary to the advice of its officers and if it recorded those reasons in the Committee minutes. There is no definition of good in PPW but it is relevant, I think, that Lord Reed used this adjective in the extract quoted from the judgment referred to earlier.

66. There have been numerous legal judgments where the reasons or reasoning of the decision maker have been examined. From reference to some of these[4], I think it is possible to identify characteristics of good reasons and I would suggest these include that reason(s) should be clear and unambiguous and should not give rise to substantial doubt, they should demonstrate that the planning authority have complied properly with their s38(6) duty and that they should enable a reader to understand how the matter was decided. In addition, where a decision is contrary to officer recommendation, they should indicate how and why they have rejected the officer's advice and to make it apparent that they have understood and properly applied relevant policies.

67. As already mentioned, **the minute of the decision records the reason for the decision as being that "the planning committee**

was of the opinion that this proposal fulfilled the spirit of policy HSG5". This is, in my view, inadequate, vague and ambiguous and could not reasonably be described as a good reason.

68. However, there was an indication in para 2.3 of the officer's report about conditions that there were other reasons relating to impact on local landscape and residential amenity which formed part of the reasons for the decision. These were further explored through the interviews and questionnaires, which indicated that some consideration was given to these other matters, although there remains uncertainty about the precise rationale for the decision

69. Taking all the evidence into account, **it is my view, based on my conclusions set out in the preceding sections, that the evidence of the Committee's reasons for their decision is insufficient to demonstrate that they had good reasons for their decision as expected by the Welsh Government's policy in PPW.**

70. The Chief Executive in his letter dated 16 July 2014 states his understanding that there is no legislative requirement for a Council to provide reasons for a decision to grant permission.

71. This is correct, insofar as planning statute in Wales is concerned. While there was, for a while, a statutory duty in England to give summary reasons, this did not apply in Wales and there is not and never has been a specific duty in Wales to give even summary reasons for the grant of planning permission. Nevertheless, there are more general statutory provisions relating to decisions taking by elected members relating to reasons for decisions and the Council's Code of Best Practice for Officers and Members contains clear guidance for Members on the giving of reasons where decisions are taken against officer advice.

72. And, as already explained, in para 3.1.5 of PPW, the Welsh Government set out clear expectations that not only should planning authorities have good reasons for decisions in those circumstances but that they should set out clearly in their minutes their reasons for doing so.

73. Consequently, **I think it is inescapable in this particular case for the lpa both to have good reasons for their decision and to record these reasons fully in their minutes.**

(ii) s38(6)

74. In relation to the duty set out in s38(6) my view is that the minute of the meeting falls short of being clear about whether or not the committee considered the proposal was in accordance with the Development Plan in respect of policy HSG5 and gives no indication of their conclusions about the other policy conflicts mentioned in the officer recommendation or whether other material considerations were relevant to their decision. Further information was provided through the interviews and questionnaires but it is still not clear whether the Committee considered the proposal complied with policy or not.

75. From my review of the issues, however, **I am quite satisfied that the proposal does not comply with policy HSG5 and my view is that an interpretation that it does would not be an objective interpretation of policy as set out in the legal judgments I have referred to. In respect of impacts on adjacent properties and the AONB, I have also identified relevant information which I think the Committee should have considered in the exercise of their judgement and which adds to my reservations about the manner in which the decision was reached.**

Soundness

76. If you consider that there is maladministration in this case you would as I understand it go on and enquire whether injustice has been caused to the complainant. You asked if I had any views on the soundness of the decision.

77. Considering all the conclusions indicated in my advice I think that there are strong grounds for questioning the soundness of the decision in this case. This follows particularly from my view that, properly interpreted, the proposal does not comply with policy HSG5. Bearing in mind the statement in the Mevagissey judgment – "*Where the committee have misunderstood or misapplied a policy, that may found a challenge to his decision, if it is material, i.e. if their decision would or might have been different if they had properly understood and applied the guidance*"– my view is that there would be a strong likelihood that, had policy HSG5 been properly interpreted and applied by the Committee in this case and other deficiencies corrected, the decision 'would or might' have been different.

1. Planning and Compulsory Purchase Act 2004
2. R (Mevagissey PC) v Cornwall Council
3. Tesco Stores Ltd v Dundee City Council [2012] UKSC 13 at [17]-[19] per Lord Reed
4. In addition to those above, R v East Hertfordshire District Council, ex P Beckman [1998] JPL 55 and South Bucks DC and anor v Porter (no2) [2004] UKHL 33
5. R v Mendip District Council ex p Fabre [2000] 80 P & CR 500

Appendix 2
PINS Letter

Dyddiad / Date: May 2015

Dear Sir, Madam

Appeals against the refusal of outline planning permission

Article 3 of the Town and Country Planning (Development Management Procedure)(Wales) Order 2012 requires certain information to be provided to support outline planning applications. This is to ensure that the decision maker has an idea of the layout and scale of the proposed development.

We have received a number of appeals against the refusal of outline planning permission where the application subject to the appeal does not contain some or all of the information required under Article 3. The responsibility for providing this information lies with the applicant and I am also writing to planning consultants and agents. However, an application should not be registered as valid if the details required under Article 3 are not provided and we should not, therefore, be receiving appeals against the refusal of outline planning permission where the application does not include this information.

We have sought to take a pragmatic approach, especially where appellants are unrepresented and sought further information. However, we can only do so where we are satisfied that no party would be prejudiced. Further, doing so creates an unnecessary administrative burden.

Consequently, appeals made against the refusal of outline planning permission after 1 September 2015 where the application does not include this information will not be accepted as valid.

Yours sincerely
Tony Thickett

Mr T Thickett Director for Wales

http://www.planning-inspectorate.gov.uk

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Tel: 01656 641150
Fax: 01656 641199
E-mail: ask@ombudsman-wales.org.uk
Follow us on Twitter: @OmbudsmanWales

Ombudsman
Ombwdsmon
PUBLIC SERVICES OMBUDSMAN FOR WALES
OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU

Summary of a report issued under section 21 of the Public Services Ombudsman (Wales) Act 2005
Case Number: 201400990
Denbighshire County Council

Mrs E complained about the manner in which The Council considered a planning for a proposed dwelling on the site to the rear of Mrs E's property. Mrs E said that there was a failure to properly interpret and apply relevant legislation, policy and guidance. She also complained that the Council did not give good reason for deciding the application contrary to policy.

The investigation found that the Council had failed to complete the validation process properly, resulting in the committee not being aware of the potential scale of the property preventing proper consideration of some of its policies. It also found that members had failed to properly interpret one of the Council's policies, resulting in the classification of the application as infill development.

a) the Council ensures that its validation process is updated to ensure that it takes into account the statutory requirements set out in article 3 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

b) The Council shares this report with the planning committee and arranges additional training for the Planning Committee which encompasses the failings identified in this report.

c) The Council ensures that it accurately records reasons given for decisions taken which are contrary to Officer advice.

d) based upon the findings in this report, the Council considers whether it is appropriate to revoke the permission it has granted.

---

e) I recommend that, if following on from d), the Council ultimately determined not to revoke, then within one month of the completion of the development, the Council instruct the District Valuer to assess the impact of the development on Mrs E's properties and pay her an amount which equates to the difference in value before and after the development.

The Council has agreed to implement the recommendations as set out.

15 September 2015