

Environment Scrutiny Committee – 5th September, 2012

Joint Report of the Director of Corporate Resources and Director of the Urban Environment

Complaint to the Local Government Ombudsman – Enforcement Matter

Purpose of Report

1. To consider and comment on the report of the Local Government Ombudsman into a complaint made against this Council considered by the Cabinet at its meeting held on 20th June, 2012 and referred to this Committee to establish what lessons can be learned from the process.

Background

2. Attached as an Appendix to this report is a copy of the joint report of the Director of Corporate Resources and the Director of the Urban Environment on the conclusions of the Local Government Ombudsman into a complaint made in respect of an enforcement matter alleging that over 100 local residents had been affected by noise, smell and other disturbance from a nearby aluminium foundry and that there had been unreasonable delay by the Council in controlling and taking action to limit the problems caused by the foundry.
3. The joint report also sets out the comments of the Director of the Urban Environment on the findings of the Ombudsman and the full report of the Ombudsman on the investigation into the complaint made is also attached as part of the Appendix to this report.
4. Arising from the consideration given to the Ombudsman's report by Cabinet at its meeting on 20th June, 2012, in addition to approving the payment of compensation to the complainant and the 27 households most directly affected Cabinet also resolved that the Ombudsman's report be referred to this Committee for consideration and comment.
5. Regarding complaints made to the Local Government Ombudsman the Committee are asked to note that this is the first report received with a finding of maladministration with injustice in the last four years and that the Local Government Ombudsman in her Annual Review Letter for 2011/12 stated that she was pleased to say that she had no concerns about the Council's response times in dealing with complaints and that there were no issues arising from the complaints that she would want to bring to the Council's attention.

The Committee are also asked to note that this matter was a particularly complex one as indicated by the comments made by the Director of the Urban

Environment in the covering report.

6. The Committee are also asked to note the further comments of the Director of the Urban Environment on this complaint arising from its referral to this Committee, as follows:-

The Council is disappointed with the conclusion that the Ombudsman has come to in this report. The matter was particularly complex in relation to technical and legal issues and remains of the opinion that it took the most appropriate steps to control the emissions as quickly as it could, given the complexities of the foundry operation and the law.

Through out the period referred to in the Ombudsman report the Council did investigate complaints, kept the complainants informed as to progress and worked with the company in order to progress matters as quickly as possible.

At all times the Council had regard to the impact on residents as well as the requirements placed on a key employer.

Despite attempts by the Company to meet the permit conditions the Company decided to cease operations at the site on the 31st March 2011.

The Council does believe that it used the available resources to the best effect and took the most viable option to achieve a successful outcome.

7. The officers have carefully considered the findings of the Ombudsman and have reviewed the formal processes associated with issuing a permit under the relevant regulations together with the approach to the ongoing internal case conferences undertaken in any such matters.

It should be noted that the process to issue a permit is laid down in National Guidance. Officers will focus in future particularly on the time taken by any company to provide the required technical information as part of the permit process. The time given must be reasonable as required by law and will be dependant on the complexity and availability of that information. If additional information is then required the time given to the company to provide it will again be the focus, although as above it has to be of reasonable length. This issue will be carefully monitored at all case conferences. See appendix 2.

Finance

8. There are no direct financial implications arising from the content of this report. Any compensation determined, arising from an investigation by the Local Government Ombudsman, is met from existing Directorate budgets.

Law

9. The Commission for Local Administration (the Ombudsman's Service) was created under Parts 1 and 3 of the Local Government Act, 1974.

Equality Impact

10. This report accords with the Council's Equality Policy. The role of the Ombudsman affords a system of complaint and redress to members of the public who consider that they have been subject to maladministration by the Council.

Recommendation

11. That, in accordance with the resolution of the Cabinet of 20th June, 2012, the Committee are asked to consider and comment on the Ombudsman's report in relation to this particular complaint, with a view to establishing what lessons can be learned in respect of the process for dealing with such matters.



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Director of Corporate Resources



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List of Background Papers

Report on an investigation into complaint number 10010095 against Dudley Metropolitan Borough Council dated 22nd March, 2012.

Report to Cabinet on 20th June, 2012 – complaint to the Local Government Ombudsman – enforcement matter

Appendix 1

Joint report of the Director of Corporate Resources and the Director of the Urban Environment on the conclusions of an investigation into complaint number 10010095 against Dudley Metropolitan Borough Council dated 22nd March, 2012.

Background

1. Caparo Aluminium Technologies Ltd operated a non ferrous foundry business at Sunrise Business Park at High St, Wollaston, Stourbridge.
2. The closest residential properties are approximately 40 metres from the site boundary in Hollybush Lane and lie roughly on the same level as the roof ridge of Caparo. Over 50 dwellings lie within 200 metres to the East of the foundry site.
3. In 2006 Caparo took over Zeus Aluminium who produced aluminium castings on the site. While at the site Zeus were the source of many complaints relating to odour and noise which resulted in the Council serving an abatement notice for noise nuisance which Zeus breached and they were subsequently fined £10,000 in the magistrates court. Complaints from residents about noise, odour and sand fallout continued after Caparo took over the site.
4. In March 2007 DMBC served a noise abatement notice on Caparo which they appealed and then withdrew their appeal in January 2008.
5. In March 2007 Caparo applied for an permit under the provisions of the Pollution and Prevention Control Act 1999 to control environmental pollution including noise. The basic content of the application was accepted on 19th March 2007, subject to further supporting information being obtained from the applicant before determination.
6. During 2007 Schedule 4, Part 4 (Pollution Prevention and Control (England and Wales) Regulations 2000) notices were served on Caparo in relation to requiring more information on noise, odour and site investigations issues. In addition officers were also involved with the preparation of officer statements & evidence, the preparation and collection of resident's statements, meetings / discussions with Councils solicitor & attendance at court hearings relating to the noise abatement notice appeal.
7. In 2008 consultants were appointed to consider all the information on noise and odour provided by Caparo. Their reports were not concluded until June and September 2008.

8. Between October 2008 and February 2009, reports and recommendations were considered by senior managers and then with members for a decision on the determination of the permit application. There was also continuing correspondence with Caparo and investigation of ongoing complaints
9. The draft decision to issue a permit was made by the Leader of the Council & the Lead member for the Environment on 16th March 2009 in order to give the company the opportunity to demonstrate compliance with permit conditions.
10. This initiated a statutory consultation exercise which resulted in two separate petitions of 165 and 145 signatures respectively one objecting to the issue of a permit until all issues on noise, unpleasant emissions and discharges from Caparo are totally resolved and the second requesting that the conditions attached to any permit must include conditions to compel the company to ensure that noise, smell and other environmental concerns are brought to and kept within national guidelines and with due consideration to local residents. Many of the names on the petitions were repeated in both petitions. Objections were also received via letters, telephone calls and e mails either objecting on varying grounds of noise, smell and fallout,
11. The Council decided through the Decision Sheet process dated 22nd June 2009 to issue a permit to Caparo Aluminium Technologies Ltd for the following reasons
 - a) To give the company the opportunity to demonstrate compliance with permit conditions.
 - b) To retain and safeguard the current level of employment provided by the company.
 - c) To enable the effective enforcement of conditions by the local authority in order to protect the environment and the amenities of local residents.
12. From June 2009 officers were involved with configuring the permit conditions with the Council's appointed consultants which also involved consultation with both Caparo and the Caparo Action Group / residents. Discussions also took place with the Health Protection Agency (HPA) and Dudley PCT concerning alleged health issues. A public meeting with residents took place in September 2009.
13. Due to a high level of complaint about sand fallout the initial permit was issued on the 10th November 2009 to control emissions apart from noise and odour. This was felt appropriate pending the drafting of more complex conditions on noise and odour by the Council's officers assisted by consultants.
14. A full draft permit was issued in March 2010 for consultation with both Caparo and the Caparo Action Group. The final permit including noise and odour was issued 5th May 2010.

15. In September 2010 Caparo announced that it could not comply with the permit conditions and remain a viable business. The business closed on the 31st March 2011

Conclusions

1. The Ombudsman considered that there was unreasonable delay in the Council issuing the permit between March 2007, when the permit application was accepted, and issued in May 2010.
2. Determination of the permit application was lengthy because of the complexity of the technical and legal issues involved, addressing ongoing daily complaints, the obtaining of additional technical information from the company and drafting appropriate conditions to adequately control the emissions. Consultants were employed to assist in this process.
3. During this period there was regular contact with both the Caparo Residents Action group and Caparo. Efforts were made by the Company to try and resolve the issues complained off with the Action Group meeting Senior Management of Caparo and officers on a number of occasions and officers and members attending a public meeting.
4. In relation to noise while the Council could have enforced the Noise Abatement notice , it was determined that the issue of a permit with conditions to control noise was the more appropriate route. The statutory provisions in relation to controlling nuisance allows for appeal which could have delayed matters for 12 months or more with a further appeal to a higher court. During this period the Company could continue production and generate the levels of noise complained of. There was also no certainty of the outcome of prosecuting the company or that any resultant fines would have improved matters. It was considered that this course of action would have delayed matters further
5. However the Ombudsman report does assert that the prime responsibility for the disturbance caused lay with the operators of the foundry and that the Council had to take account of the best use of resources in deciding on which course of action to take and also the most viable option to achieve a successful outcome.