

Meeting of the Cabinet – 20th June, 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 note the conclusions of the Local Government Ombudsman into a complaint made in respect of an enforcement matter and approve the remedy as set out at paragraph 52 of the Ombudsman's report attached as Appendix 1 to this report.

Background

2. In January, 2011, the Council received details of a formal complaint from a complainant on behalf of local residents who had been affected by noise, smell and other disturbance from a nearby aluminium foundry. He complained that there had been unreasonable delay by the Council in controlling and taking action to limit the problems caused by the foundry.
3. Following investigation of the complaint the Ombudsman has concluded, in paragraphs 41 to 51 of her report, that there was maladministration causing injustice on the part of the Council in that there was an acceptance by the Council of ongoing disturbance caused by noise, odour and particulate emissions, delay in the time taken to issue a permit and a failure to properly consider how to control nuisance from the site. (A permit to operate is required in law for certain industrial processes. The aim of a permit, issued by the Council, is to put conditions on the operator to control pollution)
4. Arising from the investigation of the complaint a remedy has been agreed upon involving the payment of compensation to the complainant and 27 households.
5. Although a remedy has been determined, the Ombudsman has issued the report attached as Appendix 1 to this report as she considers that the complaint raises issues of public interest.
6. A copy of the report of the Ombudsman is also available in the Member's Room.
7. The views of the Director of the Urban Environment on the Ombudsman's conclusions and remedy are as follows:-

The Council is disappointed with the conclusion that the Ombudsman has come to in this report. Through out the period referred to in the Ombudsman report the Council did investigate complaints, keep the complainants informed as to

progress and worked with the company in order to progress complex technical issues as quickly as possible, with local residents attending a number of meetings with the company. At all times the Council had regard to the impact on residents as well as the requirements placed on a key employer.

The Company took steps to try and resolve the problems with regard to noise and with the emissions but ultimately decided that it could not comply with the conditions imposed by the permit and closed the site on the 31st March 2011.

The Council is pleased that the report asserts 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.

While the Council accepts that some local residents were affected by noise, dust and odour it is 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.

Finance

8. As indicated in this report and the report attached as Appendix 1 compensation payments are proposed to the complainant and 27 households most affected by disturbance from the foundry site.

Law

9. Section 31(2) of the Local Government Act, 1974, requires the Council to consider the Ombudsman's report.
10. Section 31(3) of the Act enables the Council to incur expenditure in making a payment and providing a benefit to a person who has suffered injustice.

Equality Impact

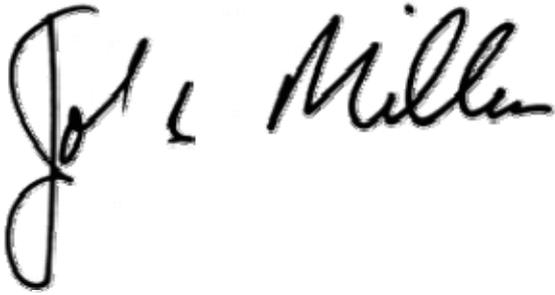
11. Equality issues have been taken into account.

Recommendation

12. That the content of the Ombudsman's report, attached as Appendix 1 to the report submitted, be noted and that approval be given for the payment of compensation to the complainant and the 27 households most directly affected.



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Director of Corporate Resources



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Director of the Urban Environment

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List of Background Papers

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