

**Y Pwyllgor Cyfrifon Cyhoeddus a
Gweinyddiaeth Gyhoeddus**

**Public Accounts and Public
Administration Committee**

Llyr Guffydd AS
Cadeirydd y Pwyllgor Newid Hinsawdd, yr
Amgylchedd a Seilwaith

19 Tachwedd 2021


Annwyl Llyr

Cwyn yn erbyn Cyngor Sir y Fflint

Rwyf wedi bod yn cynorthwyo etholwr, Mrs Marilyn Forster, gyda chwyn yn erbyn Cyngor Sir y Fflint. Yn benodol, roedd Mrs Forster yn teimlo na chadwyd at y gweithdrefnau diwygiedig ar gyfer ceisiadau cynllunio yn ystod y pandemig. Ystyriodd Ombwdsmon Gwasanaethau Cyhoeddus Cymru ei hachos a daeth i'r casgliad bod y weithdrefn gywir wedi'i dilyn. Rwyf wedi cynghori fy etholwr mai Adolygiad Barnwrol fyddai'r unig opsiwn ar ôl iddi wrth fynd ar drywydd y mater hwn, er fy mod yn ymwybodol nad yw'r opsiwn hwnnw yn fforddiadwy yn yr achos hwn.

Atodaf gopiâu o'r ohebiaeth ddiweddar ynghyd ag e-bost dilynol a anfonwyd ataf gan Mrs Forster, sy'n cynnwys nodiadau ar Apeliadau Trydydd Parti. Byddwn yn ddiolchgar pe gallai eich Pwyllgor, sy'n gyfrifol am faterion cynllunio, drafod y mater ehangach y mae'r achos hwn yn ei godi. Mae Mrs Forster wedi cydsynio i'w gohebiaeth gael ei hanfon atoch chi a'i chyhoeddi, os yw'n berthnasol. Atodaf gopiâu o'r ohebiaeth ddiweddar gyda'r cyfeiriad e-bost wedi'i guddio ar gais gan Mrs Forster. Diolch.

Cofion cynnes



Mark Isherwood AS
Cadeirydd y Pwyllgor

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

Mrs Marilyn Forster

By email: [REDACTED]

9 November 2021

Dear Marilyn

Complaint against Flintshire County Council

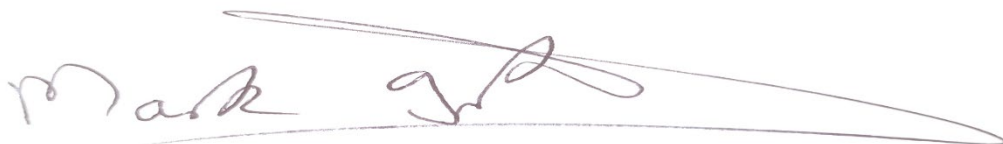
Thank you for your recent email, enclosing the Public Services Ombudsman for Wales findings regarding your complaint against Flintshire County Council, which I am responding to you as Chair of the Public Accounts & Public Administration Committee.

I understand your concerns, and as you requested, I have consulted on whether this is a matter that would be appropriate for consideration by the Public Accounts and Public Administration Committee. Unfortunately, the advice I have received is that this is not a matter that is appropriate for the Committee to consider as it is not within our remit to examine individual planning decisions or planning policy. Our remit does enable us to consider wider arrangements if there is clear evidence of misuse of public money through widespread and significant failure to follow proper procedures. However, if the local authority acted correctly within its powers and duties in making its planning decision then we are not able to pursue the matter. As you know, the Public Services Ombudsman for Wales has concluded that the correct procedure was followed.

As you have raised your concerns with the Public Services Ombudsman for Wales, I regret that a Judicial Review would be the only option left for you to pursue this matter, although I fully appreciate that this is not an affordable option for you.

I have forwarded your email of 8 November to Llyr Gruffydd MS, Chair of the Climate Change, Environment, and Infrastructure Committee, as the Committee with responsibility for planning matters, for their consideration.

Kind regards

A handwritten signature in dark ink, appearing to read 'Mark Isherwood', with a long, sweeping horizontal line extending to the right across the bottom of the signature.

Mark Isherwood MS
Committee Chair



Public Services Ombudsman for Wales (PSOW) Conclusion

Dear Mrs Forster

Complaint against Flintshire County Council

I have now considered your complaint against Flintshire County Council (“the Council”). I am sorry for the delay in providing you with a written decision on your complaint.

In reaching my decision on your complaint, I have considered all the evidence you provided, as well as material I obtained from the Council. I have also watched the webcast of the Council’s Planning Committee meeting. Having done so, I am sorry to tell you that I have decided your complaint should not be investigated. I appreciate that this outcome will be a disappointment to you, but I will set out my reasons in full.

Your complaint

You complain about the way the Planning Committee handled, and subsequently granted, planning permission for planning application 061081 at its meeting on 2 September 2020. You consider the Planning Committee failed to follow its own policies, guidance and due process, and that the decision reached was unlawful and has had a significant impact on you and the community.

The Ombudsman’s role

The Ombudsman has a dual role; the roles are separate and are governed by two different pieces of legislation. He can consider complaints of maladministration or service failure on the part of bodies within his jurisdiction which causes hardship or injustice to members of the public. We normally take maladministration/service failure to mean that the body concerned has not acted in accordance with its policies or procedures. The Ombudsman is prohibited from considering complaints against individual employees, but he can look into the actions an individual took as a representative of or on behalf of the Council. This would apply to any employee who acted with maladministration when carrying out their duties.

The Ombudsman’s other role is to consider complaints that elected members (i.e. councillors) have breached the code of conduct for members. You have commented that the Council failed to follow its Planning Code of Conduct and Welsh Government planning guidelines. It appears there was some confusion in this regard as the information provided to you by the Welsh Government referred to the members’ Code of Conduct and their obligations in planning matters. I note that my colleague has already considered and given you decisions on your Code of Conduct complaints.

In considering a complaint of maladministration or service failure, we take account of the Ombudsman’s legal powers and jurisdiction. He must act in accordance with the law which governs his work, namely, the Public Services Ombudsman (Wales) Act 2019. He cannot investigate complaints about a properly made decision that a body is entitled to make in the absence of any evidence of maladministration in the decision-making process. This means that where a body reached a decision in accordance with its policies, procedures, guidance or legislation, it is generally taken without maladministration. The Ombudsman must also consider whether his intervention is proportionate taking account of our limited resources, or if anything further can be usefully achieved.

My consideration

My role is to consider, on the Ombudsman’s behalf, the complaint you put to us and to assess whether, or to what extent, we can help you. I am conscious that you have gone to significant lengths to set out your challenges to various issues contained within the planning application, and to the process. I will not, however,

refer to every single point raised by you in your submission to this office. But in reaching my decision on your complaint, I have carefully considered all the evidence you provided and all you have said.

In order for the Ombudsman to be able to investigate a complaint, he must be satisfied that there is both evidence of maladministration (or service failure) and (my emphasis) direct hardship or injustice to a member of the public. Accordingly, a key consideration is whether a complainant has been directly or personally affected by the decision reached or the action taken by the body.

I cannot see that, even if the Council was in some way at fault, you have suffered significant hardship or injustice directly as a result. You have complained in your role as a member of the public and consider that an investigation is merited in the wider public interest. However, you have also set out the personal impact on you, in terms of the stress you have experienced, and the time and energy you have expended in challenging the planning application. While I appreciate that the application and planning decision has caused you a great deal of worry, this would not, in my view, amount to sufficiently significant hardship to merit the Ombudsman's intervention.

That said, if you did establish such an injustice/hardship, I am of the view that we could not investigate your concerns. The Ombudsman cannot investigate complaints about a properly made decision by a public body, and I explain more about my considerations in that regard below.

Your complaint to the Ombudsman concerned the actions of the Planning Committee's members and Council officers at its meeting on 2 September 2020. The Committee was determining a planning application for a change of use of the Pwll Gwyn, a grade 2 listed building. Your view is that the Planning Committee failed to follow due process in determining the application, such as only reading out the late observations received for the planning application and by referring to previous planning history, which you consider 'set the tone' for the meeting. You said the Council failed to follow its Planning Code of Practice, its planning policies and also ignored Welsh Government Planning Guidelines in its decision-making process. I would note, incidentally, that it is for each Council to determine its process and there are some variations between them in this.

This application was to be considered by the Planning Committee. The planning officer reported to the Committee on the application, with a recommendation to grant planning permission. While the Council sets out relevant policies for balancing competing interests in reaching planning decisions, the weight given to the information provided is at the discretion of the decision-maker, namely the Council as the Local Planning Authority (LPA). In this regard the LPA is required to take account of relevant views expressed by neighbouring occupiers, local residents and other third parties. While it is appropriate for individuals to have the opportunity to comment on a planning application, it remains for the LPA to ultimately determine whether the application should be allowed following consideration of any comments or objections received.

The Council's usual process for considering planning applications was suspended as a result of the lockdown in March 2020. The usual process had included the opportunity for individuals - one representative each from the applicant and objectors - to speak to the Planning Committee prior to the debate on the planning application.

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The pandemic meant changes to this process, and the Welsh Government issued advice to LPAs in respect of planning to enable them to hold meetings virtually. The advice also included the position in respect of site visits for planning applications. I note that the Council explained to the members of the Planning Committee on 2 September 2020 that the process for public speaking would not be available but that a statement could be submitted by an applicant and an objector to accompany the planning documentation provided prior to the meeting. Also, that it would only read out relevant late observations received after the Planning Committee documentation and agenda had been completed. Late observations were submitted on behalf of the planning applicant; these were read out by a Council officer in accordance with the change in process

The Committee approved the application by a majority. You subsequently complained to the Council that the Planning Committee process was unlawful, demonstrated bias towards the planning applicant and that during the debate on the application several factual inaccuracies were referred to by both the Committee members and the council officers. The Council formally responded to your complaint on 9 October 2020 and 21 April 2021.

Your specific complaint relates to the unfairness of the process followed by the Planning Committee on 2 September 2020. You are concerned that the process adopted by the Planning Committee, due to the pandemic, did not allow for third party oral representations to be made prior to the planning application. Also, that the Council read out only a statement from the applicant. I note, however, that information from third parties and statutory consultees was included in the planning officer's report on the application and was in the bundle of documents for the Planning Committee's consideration. The Council's process allows for late observations to be read out.

The process put in place by the Council at this time does not seem unreasonable. The process put in place by the Council at this time does not seem unreasonable to me, especially taking account of the constraints placed on it by the pandemic. I note that there was a substantial debate by members of the Planning Committee,

both for and against the planning application, and the issues you raise in this complaint were referred to in that debate. References were made by several members to the planning officer's report and to the accompanying documentation on the application. The planning officer also responded to the concerns raised during the debate. Overall I consider the application was robustly considered by the Planning Committee prior to reaching its majority decision that the planning permission be granted.

It is for the LPA to decide whether, upon the facts of a particular case, the objections of individuals are such that refusal of planning permission on those grounds would be reasonable. In my view, proper consideration was given to the objections by the Planning Committee. I can find no evidence that the Council has acted contrary to written policy, procedure or the law and I have concluded that, on the face of it, its actions have been reasonable. Consequently, there is no evidence of maladministration, service failure or injustice.

Whilst I have decided that we will not investigate your complaint, I would like to stress that this does not mean I am not sympathetic to the problems you have described. My decision is based upon the information I have seen. If you would like to discuss the matter with me, then you can contact me on the number at the top of this letter.

Procedural matters

An anonymised copy of this letter, which constitutes a formal statement of reasons for the decision not to investigate your complaint, has been sent to the Flintshire County Council's Chief Executive.

If you have not already done so, I would be grateful if you would complete customer satisfaction and equality questionnaires. These can be accessed at www.ombudsman.wales/customersatisfaction If you would prefer paper copies please contact us.

Yours sincerely

Email chain between Mrs Marilyn Forster and Mark Isherwood MS

Planning matters at Flintshire County Council

From: Marilyn Forster <[REDACTED]>
Sent: 05 November 2021 14:59
To: Isherwood, Mark (Aelod o'r Senedd | Member of the Senedd) <[REDACTED]>
Subject: Re: FW: Ombudsman conclusion

Hi Mark

Just for your information - no need to reply as I know you are an extremely busy man. I have just found some old notes re third party appeals which may or may not be of some use to you. I have copied them below. Many thanks and Kind regards Marilyn

Third Party Appeals plus cc Hannah Blythn

Hi Mark

Please see thread below re "Third Party Appeals" correspondence between Hannah Blythyn and Julia James.

In view our communities problems with what we consider to be an unlawful planning decisions, and others that you mentioned to me, could you possibly offer your support in a push to instigate a review of planning meetings and Third Party Appeals (TPAs)? It seems incredible that there has not been a review since 2015 despite new LDPs. In my opinion, the points that could raised are:

- How is it democratic that a proposer of a planning submission can appeal and yet TPAs cannot.
- A truly independent body should be set up by Welsh Government – not within Councils – to review TPAs within time constraints.
- TPAs could be restricted to people living within a 5 mile radius whose lives are directly affected and who can provide evidence to substantiate their appeal.
- In these days of technology, all planning meetings, post covid, should be recorded in council chambers and "live recorded Webcasts" should be available for public viewing as soon as possible after the meeting. This would obviously be in addition to the Minutes.
- Planning decisions made on that day could be temporary subject to TPAs being submitted to the independent body within 5 working days of the release of the Webcast. If none are received than the decision is ratified by the independent body. If evidence based appeals are submitted relating to the Webcast etc then a further one or two months should be allowed for investigation and this independent body should have the power to overturn a planning decision if it is proved to be unlawful.

- A fee of perhaps £100 could be charged for each person lodging a TPA and this would then make the process accessible to everyone instead of the offer of a Judicial Review costing in excess of over £10,000.
- Communities whose lives are blighted long term by unlawful planning decisions will then have some closure knowing that their objections have been thoroughly investigated by a truly independent body.
- I take the point about the UDP/LDP but if the Planning Departments and Planning Committees choose to ignore it, it is of no value whatsoever.
- Again, referring to the UDP and LDP much is made of community well-being but how can this be achieved if planners know that the community have no recourse to prove unlawful decisions unless they have a huge amount of money and therefore have to live with the consequences.
- A review of planning procedures could be an appendix to the LDP based perhaps on some of the above.
- I am aware of the Welsh Ombudsman but they may not take on a case and, if they do, it could be up to 12 months before they reach a conclusion and they do not have the power to overturn a planning decision.

As a community we were not aware of Monitoring Officers within the council departments. Are the Monitoring Officers present when the Planning Officers meet to discuss Approval or Rejection of the proposal, the decision then being presented to the Councillors? Is there a record of that discussion and information about how they made that decision? In the case of our experience with FCC the Planning Committee/department also seemed to ignore their own Planning Code of Practice. Surely the Monitoring Officer should have stopped the meeting and pointed out that it was not being run in the prescribed manner. Again, in my opinion, there is a great need for more transparency.

Planning Officers and Councillors are paid substantial amounts of money to undertake their duties. If it is obvious, by statements made by councillors, that they have not read the complete proposal and evidence based objections, then surely that should be pointed out immediately by the Planning Officer and thereby not allowing these inaccurate statements colour the final vote.

Below is a reply I received from the Chief Executive of FCC following my email re serious planning allegations:

“I will arrange to review and reply, including a view as to whether the Council has followed its own procedures for the treatment of planning applications at the Planning Committee level. Please do note that councillors who are members of the Committee are entitled to express their views and opinions in debate even if they appear to an outside party to be uninformed or incorrect.

I would not expect the Public Services Ombudsman to interfere in the case of the democratic determination of an application at Committee level, however, you can reserve the right to follow that course at a later date once I have followed up your complaint.”

Also below an email sent by Clare Morter and received by another Afonwen resident:

“From: Claire E Morter <[REDACTED]>
Sent: 15 September 2020 09:21
To:
Subject: Pwll Gwyn Public House - Enforcement reference 208408

Dear Mrs

I write further to your enquiry received concerning the works being undertaken to the Pwll Gwyn Public House, Afonwen. This e-mail is to update you on the progress of the investigation.

The Local Planning Authority were contacted before any works commenced on site, and comprehensive details were given regarding the necessity of works. The Council’s Conservation Officer assessed the proposals and deemed that they were considered essential to the protection of the Listed Building.

In addition, as you may be aware Planning Permission and Listed Building Consent have now been granted for the conversion of the building.

Accordingly, as there is not considered to be any breach of planning control the enforcement enquiry is now closed. Should you have any queries please do not hesitate to contact me.”

I placed a formal complaint with FCC on 28th September and sent an email last week to the Chief Monitoring Officer who replied on 5th October telling me “I have asked my planning solicitor for a response on your comments I will come back to you when I have heard form him”

On Mon, 1 Nov 2021 at 12:44, Isherwood, Mark (Aelod o’r Senedd | Member of the Senedd) <[REDACTED]> wrote:

Dear Marilyn,

Thank you for your e-mail and for sharing the attached conclusion.

I am sorry to read its contents, but thank you for your kind words.

My Office is already pursuing the clarification from the Ombudsman requested in your 27th October e-mail and we will share his response with you.

In my capacity as Chair of the Public Accounts and Public Administration Committee, I will also seek advice regarding giving 3rd parties a chance to challenge planning decisions within 3 weeks and at a minimum cost.

Kind regards

Mark

From: Marilyn Forster <[REDACTED]>
Sent: 31 October 2021 18:45
To: Isherwood, Mark (Aelod o'r Senedd | Member of the Senedd) <[REDACTED]>
Subject: Ombudsman conclusion

Hi Mark

I have received the attached conclusion from an Investigating officer.

I do believe that now is the time to roll over and give up!

Without a judicial review which we could not afford there appears to be no way we can challenge a council.

Maybe, as part of your remit you could look at giving 3rd parties a chance to challenge planning decisions within 3 weeks and at a minimum cost.

Thank you once again for your massive support it has been much appreciated.

Kind regards

Marilyn