

**HOUSING DEVELOPMENT, LAND ADJACENT TO RAILWAY COTTAGES,
MORIESBY PARKS, WHITEHAVEN – OMBUDSMAN COMPLAINT****Lead Officer: Tony Pomfret – Development Services Manager****To request Members' agreement to revisit the above site as recommended by the Local Government Ombudsman**

Recommendation: That Members agree to carry out a further site visit to look specifically at site levels as recommended by the Local Government Ombudsman

Resource Implications: Cost of the site visit to be met from Development Control Budget

1.0 SUPPORTING INFORMATION

- 1.1 Members are already familiar with this ongoing housing development at Moriesby Parks having visited the site on three previous occasions, the latest being in association with the Quality Review event on 9 July 2008.
- 1.2 A neighbouring resident submitted a complaint to the Local Government Ombudsman relating primarily to surface water drainage issues but also to the altered site levels brought about by the import of inert material onto the site.
- 1.3 The Ombudsman has now discontinued his investigation, the attached letters to the Council's Chief Executive and the complainant refer. Resolution of the drainage issues is ongoing and the Ombudsman has requested an update on progress within two months.
- 1.4 Within this timescale the Ombudsman has also recommended that Members revisit the site specifically to assess the degree of landfill. This, in turn, will enable an assessment of the resultant impact on development generally and the complainant's property in particular.
- 1.5 I recommend that Members accede to the Ombudsman's recommendation and arrange a further site visit accordingly.

Contact Officers: Tony Pomfret, Development Services Manager

Others Consulted: Marissa Joyce, Customer Relations Officer
Marlene Jewell, Senior Legal Officer

Background Papers: Attached Ombudsman's letters to the Council's Chief Executive and to the complainant dated 3 October 2008 (LPA file ref 4/04/2782/O01)

Local Government
OMBUDSMAN

3 October 2008

Mr Liam Murphy
Chief Executive
Copeland Borough Council
PO Box No 19, Council Offices
Catherine Street
WHITEHAVEN CA28 7NY

Your Ref:
Our Ref: 07/C/13606/DM

(Please quote our reference when contacting us and, if using email, please put the reference number in the email subject header)

Dear Mr Murphy

Complaint by Mr M Blackburn of 1 Railway Cottages Moresby Parks Whitehaven Cumbria CA28 8UY

Thank you for all the information you have provided and for your helpful comments on this complaint. I enclose a copy of the letter to the complainant explaining our decision.

You will see that I have discontinued my investigation. However, I should be grateful if your Council would continue to pursue the issue of the letter about drainage. When you have sufficient evidence I would be grateful if you could then send me a letter – and more importantly Mr Blackburn – confirming your view. I would want this letter to describe how the Council reached its position. Please provide this within two months.

I would also ask you to consider the issue of the infill (see page 2 of my letter) and whether a further visit by the Councillors might be necessary to assess the extent to which the developers have altered the site levels. On the face it looks like such a visit is required given that the levels at the site may well be materially higher than at the time of the first committee visit in May 2007.

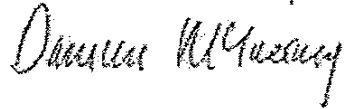
You will see that I have suggested to Mr Blackburn that it would be open to him to complaint to us again three months from now if there has been no progress on these matters.

Beverley House
17 Shipton Road
YORK
YO30 5FZ

T: 01904 380 200
F: 01904 380 269
DX: 65201 York 5
W: www.lgo.org.uk
Advice Team: 0845 602 1983

Anne Seex
Local Government Ombudsman
Michael King
Deputy Ombudsman

Yours sincerely

A handwritten signature in cursive script, appearing to read "Damien McInerney".

Damien McInerney
Investigator

Enc: copy of letter to complainant

The Commission will include this complaint in the published figures for the year ending 31 March 2009. We will record the category as planning and building control and the decision as: local settlement

3 October 2008

Mr M Blackburn
1 Railway Cottages
Moresby Parks
WHITEHAVEN
Cumbria
CA28 8UY

Our Ref: 07/C/13606/DM

If telephoning please contact: Mr McInerney on 01904 380262
If e-mailing: st1york@lgo.org.uk

Dear Mr Blackburn

Your complaint against Copeland Borough Council

I write following my recent emails to let you know the outcome of my review of your case. I have considered your papers again including the comments you made in your more recent letter of 11 September to me and your letter of 22 September 2008 to Mr Pomfret.

I know this will come as a disappointment to you but I think that I should discontinue my investigation. I shall now set out my reasons for coming to this view.

The position of the developers is that the drainage system will be effective but only once the development is complete. However, in reality only time will tell if this is the case. A lot of your concerns centre on the technical viability of the actions taken by the developers- ones you are worried will have a very negative affect on your property. I can understand that that your concerns are based on your reasonable assessment of matters- i.e. the possible effect of the gap in the retaining wall at plot 6- and also your experience of being flooded. But ultimately it is not for me to question the technical judgements made by officers who are qualified to make such decisions (especially in this case as the Council has the extra information provided by Day Cummins).

So, my focus is to consider whether the Council has properly considered your concerns. As you know I requested a letter from it that says it is satisfied that the issues it first identified in condition 5 of the outline planning permission in January 2005 have been addressed. Such a letter would also provide you with some tangible assurances that you might not experience the flooding you have previously reported (in September 2007, January 2008 and March 2008). The Council has set out what it requires in its letter of 11 August 2008 to Carruthers where it seeks the four written assurances. I have seen the response from Carruthers of 7 August 2008 where it responds. The Council has continued to pursue the matter as is evidenced by Mr Pomfret's letter of 29 August 2008.

I know you are very frustrated by the amount of time you have spent in chasing these and other matters related to the development with the Council. To some extent I felt you were put to unreasonable time and trouble hence the payment of £250 compensation. You are in a 'unique' position - but I accept that this is hardly a positive 'unique' - in that you are privy to the construction on a day to day basis. You have witnessed developments that do not strictly conform to your understanding of the approved plans. Indeed, we have seen proof of this given that the Council has opted to take enforcement action in respect of one of the plots. But often deviations of these types do occur and the Council has to take a view on whether to take any enforcement action. It is not for the Ombudsman to consider the merits of such decisions by the Council.

We have also discussed the issue of the filling in. My own view is that the Council might have handled this better. However, to a good extent the argument for infill is linked to the drainage scheme. I also note that the Councillors have viewed the scheme in 2007 and have taken the view that it is acceptable. You say that the Councillors could not have seen the full extent of the infill when they visited. I am little confused here because your letter suggests that the infill level was at a level of about 1.5 metres when I visited in May 2008 yet the Council's letter of 21 August to me refers to a site visit in August 2008. It may be a typing error by the Council given that the application for plot 7 was refused following a site visit in August 2007. I think the way to settle this matter would be for the Councillors to consider visiting the site again to see if they share your concerns about the present level of infill.

In conclusion, I am not sure that any further investigation by me at this point will achieve any more for you. I shall write to the Council informing it that I am now discontinuing the investigation. I shall ask it to provide me a letter in the next two months confirming that it is satisfied that the drainage conditions have been met. I shall also ask it to consider arranging a further site visit by Councillors so they can assess the degree of landfill. I enclose a copy of my letter to the Council for your records.

I appreciate that my decision does not provide you with the outcome you want to see. As I said earlier only time will tell whether the drainage system will work but no amount investigation by this office would be able to provide you with your understandable wish for certainty. However, I can say to you that if matters have not be progressed in three months it is open for you to come back to this office and ask us to consider looking at you case again.

The Local Government Act 1974 requires me to inform the Council of my decision on the complaint and so I am sending it a copy of my decision letters

Yours sincerely

Damien McInerney
Investigator