

# The City of Edinburgh Council

10.00am, Thursday 14 December 2017

## Monitoring Officer Investigation

Item number 8.3

Report number

Executive/routine

Wards

Council Commitments

### Executive summary

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This report sets out the findings of the Scottish Public Services Ombudsman (“SPSO”) in relation to the Council’s determination of a planning application in relation to an extension to a hotel.

## Monitoring Officer Investigation

### 1. Recommendations

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- 1.1 To note that the Council's Monitoring Officer is required, under s.5 of the Local Government and Housing Act 1989, to report to Council if he considers that in the course of the discharge of the Council's functions any proposal, decision or omission has resulted in maladministration. In this context, maladministration means unreasonableness in the delivery of Council services or failure to apply the law or rules properly;
- 1.2 To note that a report by the Scottish Public Services Ombudsman (the "SPSO") into the Council's handling of a planning application and related complaints resulted in a finding of maladministration. The Monitoring Officer agrees with this finding; and
- 1.3 To note that the Council has complied with the recommendations of the SPSO's report and has taken required action to prevent recurrence of the issues identified.

### 2. Background

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- 2.1 On 2 May 2016, a planning application was registered with the Council, reference 16/02223/FUL. The application was submitted by the owners of the Rockville Hotel on Portobello seafront. The applicants sought permission for an extension to be built into their car park for use as a restaurant. On 7 June 2016, a delegated decision to grant planning permission was made.
- 2.2 On 14 August 2016, a resident in the neighbourhood submitted a complaint via a local councillor regarding the processing and approval of the application. The resident complained that the Council's Roads Service had recommended that the application be refused as it did not meet the relevant parking requirements.
- 2.3 The Council's response stated that, due to staffing changes, the required consultation process with the Roads Service had been delayed and had not been completed prior to the decision to approve. The complaint was partially upheld by the Council, but the Council's position was that it was still reasonable to grant the approval in the absence of a completed consultation process, given the time limits which apply to this type of application.
- 2.4 The resident was not satisfied with the outcome and referred the matter to the SPSO.

### 3. Main report

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- 3.1 The resident submitted two complaints to the SPSO:
- (i) *That the Council unreasonably failed to take account of relevant planning policy before approving the application; and*
  - (ii) *That the Council unreasonably failed to await a roads authority consultation response before approving the application.*
- 3.2 The SPSO commissioned an independent planning adviser to assist it in considering the complaints. Having taken advice from the planning adviser, the SPSO upheld both complaints.
- 3.3 During the period in which the application was dealt with, planning functions were performed in accordance with the Edinburgh City Local Plan 2010 (the “2010 Plan”). 2010 Plan was Policy TRA 4 – Private Car Parking. The Council is required by law to determine planning applications in accordance with the relevant development plan, unless material considerations dictate otherwise. Policy TRA 4 as it applied to the development area recommended one parking space per every ten to twelve square metres of public floor area. Although it was open to the Council to approve a development with fewer parking spaces under Policy TRA 4, the report of handling of the application made no reference to parking. The SPSO held that the Council failed to consider TRA 4 at all when reviewing the application and therefore upheld the first complaint.
- 3.4 The SPSO considered the failings identified in this first complaint to be maladministration on the part of the Council.
- 3.5 The definition of maladministration is wide and can include incorrect action or failure to take action in addition to failure to follow procedure or the law. In this case, the Council failed to follow procedure.
- 3.6 During the Council’s handling of the application, the Roads Service recommended that the application be refused for failing to meet local parking requirements. The SPSO’s adviser concluded that the Council had had adequate time to wait for and consider the response of the Roads Service while keeping within the statutory timescale. The SPSO further concluded that “ongoing disruption to the speed and reliability of the internal consultation service provided to the planning teams by transport officers” was not a factor which supported the Council’s decision to determine the application without the Roads Service’s response. On the contrary,

this should have resulted in more efforts being made to contact the Roads Service. Further, although the Council had advised the resident that attempts had been made to obtain a Roads Service response, this was not evident in the information provided to the SPSO in relation to the complaint.

- 3.7 The SPSO upheld the second complaint, although did not find it to be maladministration.
- 3.8 The SPSO has recommended that all material considerations should be taken into account when determining a planning application and that the correct policies should be identified and referenced in the report of handling.
- 3.9 The SPSO asked the Council to provide evidence that this case has been used for learning. A case study bulletin has been issued to all Planning officers, highlighting the issues in the case and key points for learning and improvement. Evidence of this has been submitted to the SPSO.

#### **4. Measures of success**

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- 4.1 That Planning officers use the lessons to be learned from this matter to prevent a recurrence.

#### **5. Financial impact**

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- 5.1 No direct impact.

#### **6. Risk, policy, compliance and governance impact**

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- 6.1 There is a risk that by not following appropriate policy requirements, the Council is open to unnecessary external scrutiny and potentially legal action.

#### **7. Equalities impact**

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- 7.1 No direct impact.

#### **8. Sustainability impact**

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- 8.1 No direct impact.

## 9. Consultation and engagement

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9.1 None.

## 10. Background reading/external references

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The decision will be published on the SPSO's website (<https://www.spsso.org.uk/our-findings>) in due course.

## 11. Appendices

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None.

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Monitoring Officer

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