

TYNWALD COMMISSIONER FOR ADMINISTRATION
REPORT ON A COMPLAINT MADE AGAINST THE DEPARTMENT OF
ENVIRONMENT, FOOD AND AGRICULTURE (DEFA)
CASE TCA 1818

1. This is a Report laid before Tynwald pursuant and in accordance with section 19(1) of the Tynwald Commissioner for Administration Act 2011, in respect of a complaint made by Mr R.

Background

2. My predecessor received three complaints from Mr R and rejected two of them as recorded in the Section 14 Statement of Reasons dated 13 December 2018. In summary, those complaints alleged that arrangements operated by DEFA in relation to planning approvals were unlawful. My predecessor declined to investigate because he considered that there was no maladministration or service failure where (as in this instance) the action complained of had been taken in accordance with legal advice from the Attorney General's Chambers which the Department was required to follow. He did, however, accept the third complaint which he held was within the Commissioner's jurisdiction. My investigation into that complaint was delayed whilst Mr R raised a number of issues about the validity of my appointment.

Complaint

3. Mr R complained about the failure of the Planning Committee to grant him "interested party" status in respect of a development of 45 properties taking place on the outskirts of the town in which he lives. Although the initial reason for the objection was his view that the Committee had no lawful jurisdiction, he subsequently expanded his reasons, alleging that, as a result of that refusal and the subsequent grant of planning consent, he was suffering an injustice by such failure, as he satisfied the criteria set out in GC 0046/13. He asserted that the increase in commercial traffic passing his property constituted a nuisance.
4. In accordance with the usual practice, I met Mr R after he had lodged his complaint. During the meeting, when he was accompanied by a non-practising Scottish advocate, he expanded on his concerns. Subsequently, I obtained further information from the Department. The planning application was determined by the Planning Committee on 23 April 2018, although the decision notice was not issued until 19 June 2018, after the completion of a section 13 agreement, which had been a requirement of the consent. At that date, GC 0046/13, made under the Town and Country Planning Act 1999 was in force. It was revoked on 31 July 2018, when new operational policy in respect of Interested Person Status came into force, but the latter played no part in the Committee's decision.
5. GC 0046/13 sets out, at paragraph 2, the persons who will generally be accepted as having sufficient interest. These include:

- "(a) persons owning or residing in land or buildings which physically adjoin the site;
- (b) persons whose privacy would be substantially affected by the development;
- (c)
- (d) persons owning or residing in land or buildings, the legitimate enjoyment of which would be adversely affected by reason of —
 - (i) noise, dust or smell arising from the site as a consequence of the development; or
 - (ii) traffic generated by the development".

It is on subparagraph (d) that Mr R seeks to rely. In its response, the Department, among other arguments, suggested that the nuisance envisaged by the Circular was not the noise, smell and dirt which are the inevitable consequence of construction work, but the ongoing nuisance from the completed development. So a manufacturing process in a factory which produced noise and smell might be a nuisance, as defined by the Circular, but not similar inconvenience prior to its occupation. Reading paragraph 2 as a whole and giving the words of subparagraph (d) their natural reading, I am unable to make that distinction. Neither can I accept that increased vehicle traffic excludes the construction traffic.

Discussion

6. The Planning Committee had before it a map on which all the properties which had registered objections are clearly marked. The occupiers of 11 properties abutting the site were given Interested Party Status. The occupiers of 26 others, including Mr R, were refused. Mr R's property was the furthest from the site and was one of several properties on the main road. Over the years, there has been considerable development in the environs of the main road which will have increased the traffic passing Mr R's property, taking children to school or travelling to employment in the town. The additional 45 houses will, no doubt, have added to this, but he is no more adversely affected than the other properties on the main road and less so than the properties on some of the side-roads leading from the new development. During the construction phase, there might be more heavy goods traffic passing his property, although I would have expected most to join the main road and drive in the opposite direction to avoid the town. Again, Mr R is inconvenienced no more than any other property and is over 70 metres from the development.

Conclusion

7. Mr R's main complaint has always been that the Planning Committee has no legal validity and that its decisions are unlawful. That argument was raised with my predecessor who for the reasons given declined to investigate it. I adopt the same approach and proceed on the basis that the Committee is properly constituted. I can find nothing in the process it adopted or the manner of its deliberations on this

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planning application to suggest that there was maladministration and I therefore reject this complaint.

Angela Main Thompson OBE
Tynwald Commissioner for Administration
1 May 2020