

## **Business Support and Digital Overview and Scrutiny Committee**

**30 January 2025**

### **Local Government and Social Care Ombudsman Decision**

Report from: Bhupinder Gill (Monitoring Officer), Assistant Director Legal and Governance

Author: Michele Pink, Customer Relations Manager on behalf of Paul Boyd, Chief Information Officer, Business Support Directorate and Dave Harris, Chief Planning Officer

#### Summary

This report highlights fault and service failure found by the Ombudsman in a recent case about the Planning Enforcement Service and sets out the steps Medway Council has taken to apply the recommendations made by the Ombudsman, including reporting the outcome of relevant reviews to the Overview and Scrutiny Committee.

#### 1. Recommendations

1.1. The Committee note the outcome of the reviews into Planning Enforcement resource ([Appendix A](#)) and access of information during the partial building closure due to RACC ([Appendix B](#)), in response to the Ombudsman's recommendations.

#### 2. Budget and policy framework

2.1. According to Section 5(2) of the Local Government and Housing Act 1989, Medway Council is statutorily required to formally report all Ombudsman decisions and recommendations to elected members.

2.2. The Local Government and Social Care Ombudsman produces an annual report concerning complaints it has received about the services provided by Medway Council. The Customer Relations Team produces an analysis of this report, which is shared with elected members. The next issue of the Ombudsman's report is anticipated in July 2025.

2.3. In the interim, the Ombudsman has recommended that the outcome of the reviews it had requested because of its recent investigation into this particular case, is reported to the relevant Overview and Scrutiny Committee.

### 3. Background

- 3.1 On 20 September 2024, the Local Government and Social Care Ombudsman released its [final decision in a recent case](#). Following its investigation which related to the Planning Enforcement service.
- 3.2 The Ombudsman's final decision can be read in full [here](#). The complainant is referred to as 'X' throughout this report and the Ombudsman's final decision.
- 3.3 X complained about the Council's failure to take planning enforcement action against their neighbour, who carried out developments on the land next to X's home in breach of planning controls.
- 3.4 The Ombudsman found fault because of an unreasonable delay in taking enforcement action, and found service failure because the council could not access some of its enforcement records due to RAAC-related building safety issues.
- 3.5 The Ombudsman's findings noted that *"It is unusual for councils to rely on paper records rather than electronic database systems for its enforcement cases, as these records are essential documents that may be needed in appeals and court hearings"*
- 3.6 To remedy the injustice, the Ombudsman made the following recommendations:

*Within one month from the date of the final decision:*

- *Write to X and apologise for the injustice caused by the fault found.*

*Within three months from the date of the final decision:*

- *To avoid the likelihood of the fault happening again the council will review its planning enforcement service. The review will consider whether the service has adequate resources to carry out its functions effectively.*
- *To ensure it keeps proper, secure and adequate records, the council will review what information for the planning enforcement service or any other council service is inaccessible because of RAAC/unsafe building issues. It will consider:*
  - a. whether affected information might be retrieved; and*
  - b. how in future it should best record and keep its records so it can carry out its functions effectively.*

*The council is required to report the outcome of the reviews to the Ombudsman and its own relevant oversight and scrutiny committee and provide the Ombudsman with evidence it has complied with the recommended actions.*

#### 4. Advice and analysis

- 4.1 Officers have completed the recommendations set out in the Ombudsman's final decision.
- 4.2 Notwithstanding financial pressures experienced by all local authorities, the Chief Planning Officer is confident that the measures set out within his review ([Appendix A](#)) have, and continue to have, a positive impact in respect of resource within the Planning Enforcement Service, and within the available budget, and that no further action is required.
- 4.3 The Chief Planning Officer is confident that the measures set out in the review ([Appendix B](#)) sufficiently address the errors made in respect of access to records, and that no further action is required.
- 4.4 The Facilities Management Contract Manager is confident that all services are aware of the correct process to request access to gain information stored in Gun Wharf within RAAC confined areas, and that no further action is required.

#### 5 Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Continued failure to take planning enforcement action.	Failure to act within appropriate timescales to reports of alleged planning breaches and to carry out enforcement action.	Appropriate measures have been taken to strengthen resource within the Planning Enforcement Team	D III
Inability to access information held by the council.	Failure to retrieve customer data and case files held in paper form at Gun Wharf whilst the building is partially inaccessible.	Paper documentation is scanned and filed electronically. In rare circumstances, where documentation may be held in paper format, a process can be followed to retrieve this whilst work is ongoing to make the building safe.	D IV

For risk rating, please refer to the following table:

Likelihood	Impact:
A Very likely	I Catastrophic
B Likely	II Major
C Unlikely	III Moderate
D Rare	IV Minor

## 6 Climate change implications

- 6.1 Complaint investigations and responses consider climate change implications where appropriate and in accordance with the climate change emergency as set out in April 2019.
- 6.2 Complaint responses and interactions with the Ombudsman are managed electronically as much as possible.

## 7 Financial implications

- 7.1 The Ombudsman may make recommendations to make symbolic payments to recognise the injustice caused by fault or service failure. In this case, the Ombudsman made no such recommendation.

## 8 Legal implications

- 8.1 Effective Complaint Handling for Local Authorities (October 2020), Reporting on Ombudsman findings, (LGSCO guidance) states:

*“Section 5/ 5A of the Local Government and Housing Act 1989 places a requirement on every council’s Monitoring Officer to prepare a formal report on all Ombudsman complaint decisions. We support a flexible approach to how councils discharge this duty as long as the intent is fulfilled in some meaningful way, and a council’s performance in relation to Ombudsman investigations is properly communicated to elected members.*

*As a guide, we suggest:*

- *Where we have made findings of fault in regard to routine mistakes and service failures, and you agree to remedy the complaint by implementing our recommendations, the duty is satisfactorily discharged if the Monitoring Officer makes a periodic report to the council summarising the findings on all upheld complaints over a specific period. In a small authority this may be adequately addressed through an annual report on complaints to members, in a large County or Metropolitan authority this might need to be more frequent.*
- *The Monitoring Officer should consider whether the implications of an investigation should be individually reported to members where that investigation has wider implications for council policy or exposes a more significant finding of maladministration. Examples could include:*
  - *The maladministration is, or has been, ongoing and therefore putting the council or authority at risk of further maladministration.*

- *The large scale of the fault or injustice.*
- *The reputational or financial risk arising.*
- *The large number of people affected.*
- *In the unlikely event that an authority is minded not to comply with the Ombudsman’s recommendations following a finding of maladministration, the Monitoring Officer should report this to members under section 5 of the Local Government and Housing Act 1989. This is an exceptional and unusual course of action for any council or authority to take and should be considered at the highest tier of authority.*
- *If our finding of maladministration is issued as a public interest report (under section 30(1)) of the Local Government Act 1974), there is a specific requirement for that finding to be reported to a council’s or authority’s members, and for a formal response to that finding to be sent to the Ombudsman. The council or authority’s response must be sent to the Ombudsman within three months setting out the action that they have taken, or propose to take, in response to the report.”*

8.2 Medway Council meets this requirement by producing an annual analysis and a bi-annual summary of all Ombudsman investigations about Medway Council’s services. All upheld decisions are reported to the Monitoring Officer and discussed with relevant senior managers to ensure learning is embedded.

## Lead officer contact

Paul Boyd, Chief Information Officer, Business Support Directorate.

## Appendices

<a href="#">APPENDIX A</a>	Review of Planning Enforcement service.
<a href="#">APPENDIX B</a>	Review of access to information due to RAAC

## Background papers

[Local Government and Social Care Ombudsman final decision](#)

[Internal publication for staff re Gun Wharf – December 2023](#)

Review of Planning Enforcement service by Dave Harris

Throughout 2022-23, the Planning service went through a re-structure with the specific aim of assisting with retention and recruitment of staff. This was undertaken as a direct result of difficulties in recruiting experienced staff and with a number of staff leaving the Authority. While this experience was commonplace amongst Kent Authorities, the re-structure was felt necessary to try to address the problems.

This new structure is now in place and recruitment to the vacant positions is ongoing. Staff turnover has already reduced, and we are getting appropriate candidates for the various vacant positions. The service has filled the Enforcement Officer and Assistant Enforcement Officer vacancies and, most recently, the vacant Derelict and Empty properties post. The service is also sponsoring the new Assistant Enforcement Officer through university (day release), as we do many planning staff, which will assist with retention, skills and motivation.

The service is also in the next phase of the Medpay review, and the Career Progression Framework is designed to aid the retention of the experienced and high-quality staff currently in the team.

In addition, the planning service is at the forefront of digital planning, working with the Ministry of Housing, Communities and Local Government (MHCLG) on the Government's open digital planning project. As part of this, Medway Council is one of only four authorities to 'go live' with the 'Report a Breach' tool, an electronic form enabling customers to easily let us know when there is a potential problem. This was introduced on 1 July 2024 and has already shown a reduction in the number of complaints processed by the service that are not breaches of planning permission from 60% to 10%, thereby helping to free up valuable professional staff time to undertake investigations on the valid reports.

Review of access to information due to RAAC

Gun Wharf was closed under emergency measures in October 2023 when RAAC was found in parts of the building.

In December 2023, Medway Council released [an internal publication for staff](#), updating them on news about Gun Wharf and explaining the procedure to be followed, should they need access to items contained within closed parts of the building, referred to as 'Red Zones'.

On 8 October 2024 the Customer Relations Manager discussed the recommendations with the ombudsman's investigator by phone. She explained that the building was initially evacuated under emergency measures in October 2023, but that some parts of the building had since been reopened following careful assessment. She also explained that the council has a process by which information can be retrieved on areas still restricted (see above), and that such requests are considered by the Facilities Management Team using a risk-based approach.

On this basis, the investigator agreed that a separate report into access to information would not be required, and that this single report would be sufficient to meet the recommendations in his final decision.

The Ombudsman has been reassured that now that the Planning Service is able to access its previous office space, it is now working through any outstanding paper files and ensure that they are properly recorded and stored electronically.

All staff have been reminded that all notes of site visits and meetings must be recorded on an electronic file on the system and be accessible to view by relevant staff. This corrects the problem caused in this isolated case where the case officer made file notes (paper copies) but did not place them on the electronic file; this officer subsequently left the authority. This was further exacerbated at the time when the enforcement officer who took over the case, took sick leave and then also left the authority. Electronic record keeping will make sure the problems encountered when staff leave, or are absent, will be avoided in future.