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Babergh & Mid Suffolk District Councils
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16 July 2024

Delivered by email to:

Babergh District Councillor Deborah Saw, Leader at Deborah.saw@babergh.gov.uk, and
Mid Suffolk District Councillor Andrew Mellen, Leader at Andrew.mellen@midsuffolk.gov.uk

Dear Councillors

Babergh and Mid-Suffolk District Councils Planning Department

Further to our letter of 14th November and your response of 28th November 2023.

I am sorry to say that as our elected Council Leaders your response fails to adequately address the community's concerns raised with you over the performance shortcomings of the Planning Department which serves Babergh and Mid Suffolk District Councils.

We are therefore writing to set out the grounds for our request that you institute an independent inquiry into the decisions made by the Planning Department.

It is over one year into the new administration, and it is of continuing concern that our complaints about the Planning Department were not followed up with an independent investigation. Instead, the administration saw fit for the issue to escalate all the way to the Ombudsman.

We understand that the Planning Committee is not meeting regularly. As the Greens and Liberal Democrats are known to champion local democracy, we are puzzled by this. Delegation of powers should not equate to abdication of responsibility, allowing even more decision-making authority being given to a planning department that in our view is not fit for purpose.

The pattern of poor management of the planning process which prompted our original complaints has since been independently evidenced by national supervisory bodies:

- by the criticism of the Council by the Information Commissioner's Office referenced in Annex point 8
- by the National Planning Inspectorate which made a judgement and award of the more than £100,000 in costs against you re. the ENSO Appeal.
- The instruction to Council to issue a formal apology to Care Suffolk for its failure to follow the correct procedure in handling its complaint. (It should be noted that as of today, the Council has failed to issue the apology within the statutory timeframe, as instructed by the Ombudsman).

It is surprising that you prejudged the outcome of the Ombudsman investigation by endorsing the performance of the Planning department. You admit this same performance to being 'disappointing' but have not taken steps to investigate it. We would have expected Mr Charvonia as CEO to have advised you both not to sign a pre-emptive letter of confidence until the evidence had been assessed.

The adverse findings of the Planning Inspectorate and Information Commissioner were good grounds to initiate an independent enquiry and scrutiny of the Planning Department's performance. We trust that the same planning officials were not allowed to act as the official voice of the Council in responding to the Ombudsman investigation.

Grounds for New Complaint

The matters relating to 8th February 2023 have been investigated by the Ombudsman. Many subsequent issues were raised with the Ombudsman, and it is through communication with them that we understand that some of these issues are unable to be investigated because they did not form part of the original complaint in March 2023. As a result, we now wish to raise a formal complaint to address those other issues. For clarity, we are setting out these additional issues in the Annex for your attention and sharing it with all elected members and relevant bodies.

We are concerned that planning officials are not following correct process and best practice.

We are pleased that as stated in your letter, you shared the details of our original complaint with all Councillors, and we ask that this matter now be taken up at full Council. Please could you also confirm that Councillors have been informed about the funding Council is receiving from the developer EDF Renewables under a Planning Performance Agreement. Can you please provide a copy of the Agreement which sets out the funding details? We note that the Local Government Association (LGA) best practice guidelines suggest that this agreement be published on the Council's website – has this been done? Were statutory consultees engaged in developing this Agreement (as is also suggested by the LGA)?

In summary, the weight of evidence we have set out requires that you as Council leaders act to now institute an independent inquiry into the performance of the Planning department.

We hope that you will reply promptly and in full on all these matters to avoid this forming a further complaint to the Ombudsman.

We look forward to your responses.

Yours sincerely

Mrs Susan Frankis

Mrs Susan Frankis, Clerk to the Parish of Burstall

On behalf of Burstall Parish Council & Care Suffolk

cc Arthur Charvonja CEO BMSDC

All Babergh District Council elected councillors

All Mid Suffolk District Council elected councillors

Suffolk County Councillor, Christopher Hudson

SALC

Annex

Subject	Issue
<p>1. In camera meeting of Mid-Suffolk Planning Committee to discuss review of appeal for application DC/20/05895 [21st June 2023]</p>	<p>(a) The use of legal privilege was used to exclude the public from hearing the legal advice, but it was also used to exclude the public from the debate and vote following the receipt of the legal advice. This is an overuse of legal privilege. Only the legal advice was permitted to be confidential, not the discussion after. Why was the advice not provided in writing in confidence to members, enabling the debate and vote to be held in public?</p> <p>(b) Prior to the meeting two Councillors informed the public that a statement would be issued after this agenda item. Residents were unable to wait until the end of the item in person because the agenda item was moved to the very end of the day, however several residents were waiting for the livestream to resume for this. Why was no statement issued at the end of the agenda item?</p>
<p>2. Our 20th June 2023 Meeting with Arthur Charvonia and Tom Barker</p>	<p>(a) During the meeting we were assured that application DC/23/02118 on the 21st June 2023 MSDC Planning Committee meeting would be happening, and that it could not be removed. Less than 2 hours later residents were informed that it was being removed. Can Council confirm that neither the CEO nor Head of Planning were aware that this was happening?</p> <p>(b) Who made this decision to remove it, and which senior officials were consulted and when?</p>
<p>3. Commencement of works prior to the discharge of Condition 27 (Soil Management Plan) of planning permission DC/21/04711</p>	<p>The protection of the soil for future agricultural use is one of the biggest concerns of residents for these applications. It was understood by the community that a Soil Management Plan, submitted prior to any work including preparatory works, would help protect the soil. Yet preparatory work started prior to the discharge of this condition. Upon consultation, we understand the Council's legal advisor stated the condition would need to be imposed. However, the Planning department declined to intervene, failed to escalate the issue to enforcement for their review, and stated that compliance on the part of EDF was voluntary. MSDC Enforcement later overruled this with a temporary stop notice and supported the community concerns. However, works did not cease on site, and enforcement quickly removed the stop notice. Does Council understand how this evidences bias towards the</p>

	<p>developer on the part of the Planning department, and poor understanding of the importance of understanding planning conditions between everyone?</p>
4. EDF Community Liaison Group	<p>Please provide a copy of the Planning Performance Agreement with EDF</p>
5. Appeal DC/21/05895 Public Inquiry, August 2023]	<p>Council's stated reasons for not appearing at the Inquiry have been altered: <u>Reason given to Inspector:</u> "updated national policies" - which substantive arguments were rejected by the Inspector and provided grounds for his costs award against MSDC. <u>Reasons given in your letter dated 28 November 2023 that MSDC withheld the legal advice to avoid hindering the public and Rule 6 Party representations at the Appeal, and Council did not appear in order to facilitate residents' representations.</u> (a) which of these positions is correct? (b) why was the explanation changed, and by whom? (c) what evidence supports the statement that Council could not have appeared alongside residents? (d) what evidence do you have that "residents" preferred the Council not to appear? Who was consulted, by whom and when? (e) Reasons given verbally by senior officials in addition to the above are that six landscape consultants refused to provide evidence on behalf of the Council. Please provide evidence that Council contacted multiple landscape consultants to submit evidence at the appeal and was unable to engage any. Which consultants were approached?</p>
6. Costs Decision for appeal DC/21/05895	<p>(a) Has any official in MSDC been sanctioned, investigated, or subject to disciplinary action over the poor handling of the ENSO Public Inquiry and the >£100,000 costs to taxpayers from this? (b) We understand the Planning Officer who led the application from the start and who was involved with the appeal, conducted a review of the costs decision. Has any independent review been conducted into the issues raised by the Planning inspector in his costs decision?</p>
8. FOI Inconsistencies	<p>(a) Under FOI-552733250 with BMSDC, information relating to the costs claimed by Enso as part of the appeal DC/21/05895 were released by MSDC by email and on to the Council's website. However, when a subsequent FOI was submitted requesting copies of other documents relating to the same appeal, the costs information previously released was removed. Why were the costs documents from FOI-552733250 subsequently removed after release to the public?</p>

	<p>(b) A Planning Dept Officer refused to release documents about the Inquiry due to “commercial sensitivity”. When this was appealed to the Data Protection Officer no response was received in the stated timeframe according to Council procedure. It was escalated to the Information Commissioners Office, who overruled the Planning Officer and insisted the documents be released. The information was subsequently released and the Council advised that there was a misunderstanding about the Council deadlines for FOI requests. Has the Officer received updated training as to what constitutes “commercial sensitivity” to prevent false rejections again? Has the Planning Department received updated training about the Councils deadlines for complying with FOI requests?</p>
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