

Appendix 1 – Report of the Local Government Ombudsman

The Ombudsman's final decision:

Summary: The Council decided to close premises it owned which were used by a number of local community groups. Its actions in that matter were not affected by fault.

The complaint

The complainant, whom I shall refer to as Ms B, complains that the Council's action in taking a decision to close a centre used by several community groups including a group she works with, was flawed. In particular she complains that:

- the consultation process was inadequate;
- the group was given insufficient notice to vacate the premises;
- the reason for closure was given in November 2012 as faulty electrics yet there had been no change since a previous report was produced in 2009;
- the closure was pre-meditated on financial grounds and the Council allowed the building to fall into decline over a number of years in order to achieve its aim of demolition.

The Ombudsman's role and powers

The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1))

The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3))

If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (Local Government Act 1974, section 30 (1B) and 34H(i))

How I considered this complaint

I considered all the information provided by Ms B about her complaint. I made written enquiries of the Council and took account of the response provided. I gave Ms B my provisional view of her complaint and considered her comments on it.

What I found

Ms B works with a music group for disabled adults. She also represents a campaign group made up of others who had been using the building (which I shall refer to as 'the Centre') which the Council decided to close in November 2012.

The Centre, formerly a school, had been used as a base for the Council's school's music service since the 1990s and the Education Service was responsible for the building. It was also used by two major opera and ballet groups, and over time other groups rented space within the building from the Council. In September 2009 a routine building condition survey was commissioned by an arm's length company acting for the Council. Since the use of building as a school had stopped, only reactive maintenance had been carried out. The survey identified maintenance works with an estimated cost of almost £2.2m were required. Works recommended included, but were not restricted to, electrical works. All works identified were given a priority marking with Priority 1 being the most urgent, and a condition grading A-D, where a category C marking indicated poor condition ("exhibiting major defects and/or not operating as intended") and a category D marking indicated bad condition ("life expired and/or serious risk of imminent failure"). While some of the electrical work was categorised as Priority 1, none was graded category D so was not deemed life expired or at serious risk of imminent failure.

In April 2011 a deputation to Council from the local residents association about plans for the Centre highlighted the need for the future of the building to be reviewed. In June 2011 the Council's Executive Board instructed that an options appraisal be carried out into the future of the Centre. The options appraisal considered options for repairing the whole building, repairing and refurbishing part of the building, a new build on site and closing the building and moving services elsewhere.

Consultation for the options appraisal began in October 2011. There was an evening consultation event for users of the centre. Questionnaires were distributed seeking comments on the options appraisal. Mrs B says this was during half-term when many of the users who were involved in education were unable to attend. But additional consultation meetings took place in November with specific users, including one with Mrs B's group.

In April 2012 an update on the options appraisal was provided to the Council's Asset Management Board (AMB). The report set out the various options and provided comment on them. The report noted that all respondents to the consultation survey who had expressed an opinion felt that the building or part of it should remain in use. But the option of retention of the whole property was not deemed viable for a number of reasons including financial grounds. The report said that feasibility studies of the available options were needed and in June 2012 the Council issued instruction for these studies to be done.

The report from the options appraisal study was produced in August 2012. The document set out the advantages and disadvantages of part demolition and

refurbishment, and full demolition then rebuilding. It included a structural engineer's report, a mechanical engineer's report, a fire safety report and electrical engineer's report. The electrical engineer described the electrical systems in the premises as antiquated and said they might not comply with current regulations. Following internal discussion of the feasibility report the Council requested a health and safety inspection, and officers from the Asset Management team proposed making an emergency plan in case the building had to be closed.

On 2 October 2012 the Council's electrician was instructed to carry out an assessment of the electrics in the building. Following a site visit the Electrical Projects Engineer in Corporate Property Management raised concerns with a manager in that department about the electrical installation, and recommended full refurbishment of the electrical services. It was accepted that the electrical services had been neglected but the building was deemed to have short life expectancy so urgent or high risk areas would need to be prioritised. The Electrical Projects Engineer subsequently confirmed the only possible course of action would be to fully replace the existing installation or to close it down. He said the electrical installation on the site was the poorest in the Council's property portfolio, to his knowledge. The Property Portfolio Manager then advised the Head of Corporate Property Management that if subjected to electrical testing (as it should be) the installation would undoubtedly fail; the main switchgear could be regarded as "dangerous"; the fire alarm was considered "seriously deficient"; and the emergency lighting system was a hazard to occupiers. Internal emails show that the Council was concerned then about the potential risk to users of the site and whether immediate closure of the premises was necessary.

On 1 November 2012 the AMB discussed the case and support was sought for the relocation of all but one of the Council services from the defective building to alternative premises which had been identified. The Council's view was that a quick decision on the future of the building was needed due to the potential danger presented by the electrical installation. Other users of the Centre were acknowledged and the report to the AMB said that where external organisations had annual lets these could be terminated at short notice, with the Council assisting in relocations. The minutes of the meeting show AMB agreed to the proposals put forward in the report and that a concern was raised about the report describing the electrical installation as dangerous and that users must not be put at risk of danger. It was agreed that urgent action was required and that an immediate assessment of the danger had to be made with a view to evacuating staff and closing the building if this was required. Urgent confirmation of the state of the electrical installation was to be arranged and any decision to close would be made by officers from Development Asset Management in consultation with the Executive Member.

The following day, Friday 2 November 2012, a briefing note was provided to the Executive Member, the recommendation being the immediate closure of the centre with relocation of affected Council staff. The Council rang the Centre and advised the

Administration Coordinator of the discussion which had taken place at the AMB and of the likely outcome later in the day. The Member then confirmed closure. Staff at the Centre and the Ward Members for the two local wards were informed accordingly. Council staff then attended the site the following day, Saturday, and the Monday to speak to staff members and other users of the centre.

Ms B reports that her group was advised of the closure on the Monday morning only shortly before sessions for the disabled users were due to begin. The unexpected closure caused vulnerable users upset and confusion. The group also incurred extra administration costs.

On 8 November a formal electrical inspection was carried out in accordance with the relevant British Standard. Of 11 items tested, eight were classified C1 - Danger present, risk of injury: Immediate remedial action required. Two were classified C2 - Potentially dangerous, urgent remedial action required; and one was categorised C3, improvement recommended. The overall classification, which can be either satisfactory or unsatisfactory, was therefore given as unsatisfactory.

Ms B alleges that the electrician who undertook this inspection told her he had been instructed to ensure the building was condemned as unsafe. The Council has provided a statement confirming that a woman had remonstrated with the electrician on site and he had told her he had noted on the report what he had seen of the installation, which was that it was in a very bad condition and unsafe. The statement says that at no point was he instructed to falsify the outcome of the inspection to facilitate closure of the centre. So the statements from the Council and from Ms B are contradictory. On balance, taking account of all the information I have seen, my view is that the Council was not at fault here.

Ms B considers that the finding that electrics were unsafe in November 2012 must mean they had been equally unsafe when the previous report had been made in 2009. However, the Council points out that the earlier electrical report was part of a building condition survey and had not stated the condition of the electrical installation was dangerous, whereas the 2012 electrical inspection found the electrical installation could be described as dangerous. There were also concerns about the health and safety risks posed by the fire alarm and emergency lighting systems on the site. The Council therefore took the view that the condition of the building posed a major health and safety risk. In any event, a separate independent condition survey was commissioned which reviewed the 2009 condition survey against the current condition of the building. In the resultant report the section on electrical services noted the works which had been identified as necessary in 2009 and that there had been further deterioration. The report concluded that the health and safety risk justified the decision to close the facility to public occupation and that significant investment would be required to bring the building back into useful life.

After the temporary closure in November 2012 and before a decision was made on permanent closure, there was more consultation with those who had been using the Centre. The findings of the consultation were reported to the Executive Board in February 2013. The consultation had highlighted the users' preference for the building to remain as a centre for cultural activities. The various options for the future of the building were set out. A final decision on the future of the building was taken by the Council's Executive Board on 17 July 2013. The decision was to close the building permanently on the basis of the level of investment needed. It was not considered to be an efficient use of Council resources. Permission was granted for the demolition of the Centre.

The Council has acknowledged that the users of the centre were subject to disruption and in some cases costs associated with the closure. But under the circumstances it considered the closure unavoidable. It offered the users assistance with relocation trying to match their needs with other available property, and this work is still ongoing with some users (including another music group which works with people with special needs and disabilities). Reports on this were provided to the Council's Executive Board in February and July 2013. The Council was able to identify alternative premises for some users and others were able to find their own alternative premises. The Council says none of the affected groups had a right to compensation under the terms of their letting agreements, but it did make payments in some cases in recognition of costs incurred as a result of the transition out of the Centre. Ms B's music group received £1,373.41 in reimbursement of costs incurred as a result of cancelled sessions. Some of the other groups she represents also received payments.

The Council did consult users both in 2011 and later after the temporary closure and before a final decision was taken on the future of the Centre. The results of consultation were properly reported and taken into consideration as part of the decision making process. The Council could not consult over the temporary closure or give advance notice to users of the Centre because it was an emergency decision based on serious health and safety concerns.

The long-term future of the Centre and its availability for use by various groups had never been assured. In particular it is of note that since at least 2008 the main Council service which had been operating from the Centre had been anticipating moving out of the premises in the longer term. The Council was entitled to consider its options, looking to rationalise staff premises and avoid large capital expenditure which could not be properly justified. This is not the same as saying the closure was pre-meditated on financial grounds, as Ms B asserts was the case. The evidence shows that the Council properly considered its options and the decision-making process was not affected by fault.

Final decision

While acknowledging the upset and inconvenience caused to users of the Centre by the decisions made about its closure, for the reasons I have given my decision is that the Council's actions in this matter were not affected by fault.