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P-04 -510
28th January 2014

Mr William Powell AM
Chair
Petitions Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear William,

Petitions Committee re. Breckman

Thank you for your letter dated the 6th December putting me on notice of a 63 signature petition calling upon the National Assembly to urge the Welsh Government to establish a public inquiry into the Council's handling of the Breckman complaint.

Needless to say I would urge the Petitions Committee not to involve itself in this matter. As you will know, planning is an emotive subject and as a planning authority we often get caught up in the middle of neighbour disputes.

We do not know who the main petitioner is, and we do not know the basis on which he asks for the Petitions Committee to involve itself in the matter, other than he talks of maladministration on our part. In that respect, whilst the Public Services Ombudsman for Wales did make some findings of maladministration against the Council he did not consider it necessary to issue a Public Interest Report, choosing instead the much softer option of a non-public s. 21 report. The main issues in the case are reported in the Ombudsman's Casebook for October 2012, and to assist your understanding of the issues I reproduce the Casebook entry here:

"The Ombudsman's Casebook October 2012 July 2012 – Unauthorised Development – Carmarthenshire County Council

Mrs. B complained that the Council failed to take enforcement action in respect of the use of the neighbouring farm for haulage and equine related activities and the erection of a large board and the placing of a removal lorry adjacent to their boundary. Mrs. B also claimed that its decision to allow the development of an agricultural shed was perverse. Finally Mrs. B complained that the Council was unreasonable when it applied its Persistent Complaints Policy

to her and her partner and was aggrieved about the way in which her partner was referred to in an internal e-mail.

Mrs. B's complaint was partially upheld. The Ombudsman concluded that there has been a failure to take account of photographic and video evidence provided by Mrs. B, information provided by their surveyor, and information from the Traffic Commissioners about the licensing of the neighbouring farm as a heavy goods vehicle operating centre. He also concluded that the Council's decision in respect of the large board was inappropriately influenced more by the dispute between Mrs. B and the neighbouring occupiers than material planning considerations, and that the Council had shown a lack of objectivity in relation to her concerns. However, the Council's decision in respect of the removal lorry was one it was entitled to take. But the process by which it allowed the agricultural storage shed was flawed in that the Council had held reservations about the agricultural need for large sheds on the holding and had relied on advice which related to an earlier cattle shed proposal and which opposed a general storage shed. The Ombudsman also concluded that the Council failed to comply with its own procedures when it applied its Persistent Complaints Policy to Mrs. B and her partner, and failed to respond adequately to her further complaints in which she raised new issues. However, the Ombudsman did not conclude that the reference to Mr. R in an internal e-mail pointed to maladministration.

The Ombudsman recommended that the Council should address the enforcement issues arising from the haulage-related uses at the neighbouring farm, and should also ensure that the concerns identified in the report are brought to the attention of its members. The Ombudsman also recommended that the Council should give consideration to adopting a mechanism whereby enforcement matters could be considered or called in by its' Planning Committee in appropriate cases. The Ombudsman further recommended that the Council use its best endeavours to persuade the neighbouring occupier to remove the large board which is now immune from enforcement action, pay £2500 to Mrs. B and a further £1000 if the Council is unable to secure the removal of the board within 6 months. Finally the Ombudsman recommended the Council review its planning and enforcement procedures, including its procedures for liaising with the Traffic Commissioners in appropriate cases, and to ensure that its revised Persistent Complainants Policy was actually complied with by providing appropriate awareness training".

The Ombudsman took 13 months to investigate this complaint from notification to us to issuing of his report stage, and in the course of his investigation he interviewed the complainants, 12 officers (including a Director, 2 Heads of Service, 2 lawyers), an ex-employee and 3 members but interestingly, not the neighbour. As I mentioned earlier, after that in-depth investigation (in the course of which he was advised by a consultant planner), the Ombudsman did not consider it necessary to issue a full blown Public Interest Report, so it seems odd in those circumstances that the Welsh Government should be invited to conduct a public inquiry. Hopefully, having read the Casebook entry yourself, you will agree that there is nothing involved in this case which warrants the cost of a public inquiry.

The Ombudsman had in fact declined to investigate complaints in relation to this matter twice in the past – once in 2005 when he notified the Council that he was not going to investigate as the complainant had not provided evidence and he did not investigate speculative assertions; and again in 2009 when he said that he had no jurisdiction to question the merits of a decision (in this case a decision that it was not appropriate to take enforcement action) in the absence of some shortcomings in the way it was reached. I must read the 2009 decision by the

Ombudsman not to investigate the complaint as meaning that he had no evidence before him that the Council had taken its' decision not to take enforcement action in an inappropriate way. It was therefore disappointing to note that when a complaint was made for a third time in 2011 the Ombudsman disregarded his Office's previous conclusions and decided that an investigation should be undertaken, and that it should be backdated to events from 2004 onwards. This placed us at quite a disadvantage, not least because the Council's Planning Enforcement Officer had retired in the meantime, although we are pleased to say that he did agree to be interviewed by the Ombudsman.

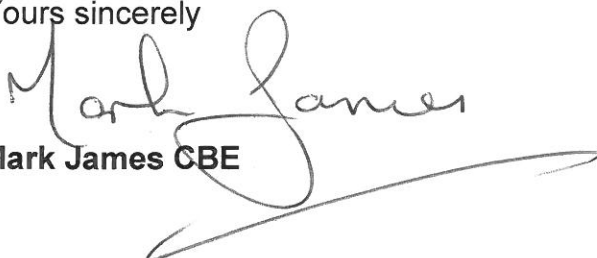
I can assure you that this Council has taken this matter very seriously, including taking Counsel's Advice at the draft stage of the Ombudsman's Report (as a result of which we secured some concessions from the Ombudsman). We also reported the Ombudsman's "concerns" (as referred to in his Casebook) to a joint meeting of the Council's Executive Board, the Chair of the Planning Committee and the Chair of the Environment Scrutiny Committee. The Ombudsman made 8 recommendations in his s. 21 Report, all of which have been implemented by the Council. These ranged from determining the options for taking action against the neighbour (if any), to making a modest payment to the complainants along with an apology, to reviewing our Persistent Complainants Policy & Procedure.

Unfortunately, as a result of the Council succeeding in implementing one of the Ombudsman's recommendations (which was to "use (our) best endeavours" to persuade the neighbour to remove a board from his land) matters between the neighbours have deteriorated even further (if that was possible) in that the board has been replaced by something much larger which is outside of our planning control (or indeed, any other legal powers). The Council is actively involved in a multi-agency dialogue (with, amongst others, the Police, the Police Commissioner personally, the A.M.) aimed at trying to resolve the matter amicably. The Council also continues to monitor activity at the neighbour's property.

As a general indication of our Planning Service's performance it is pleasing to note that there has only been one Ombudsman's report issued against the Service in the past 3 years, and that was the one relating to the subject matter of this petition, and as I said, that was a matter which the Ombudsman did not deem to be serious enough to warrant a public interest report. Whilst we appreciate that this case has received much media coverage over the years we would make the point that much of the coverage has focussed on the conduct of the neighbours between themselves and matters not relating to the Council's remit.

I sincerely hope that the Petitions Committee will not endorse this petition and put the Council to the expense of having to go to a public inquiry to defend its actions in one planning case, particularly in light of the fact that the complainant could always have resorted to legal proceedings had she thought that she had a strong basis for her complaint and our current performance in terms of complaints to the Ombudsman on planning matters show no general cause for concern.

Yours sincerely


Mark James CBE

